

EXHIBIT H

RYAN S. LANDES (State Bar No. 252642)

ryanlandes@quinnmanuel.com

Quinn Emanuel Urquhart & Sullivan, LLP

865 S Figueroa Street, Floor 10

Los Angeles, CA 90017-5003

Telephone: (213) 443-3145

Facsimile: (213) 443-3100

STACYLYN M. DOORE (admitted *pro hac vice*)

stacylyndoore@quinnmanuel.com

Quinn Emanuel Urquhart & Sullivan, LLP

111 Huntington Avenue, Suite 520

Boston, MA 02199

Telephone: (617) 712-7100

Facsimile: (617) 712-7200

RACHEL E. EPSTEIN (admitted *pro hac vice*)

rachelepstein@quinnmanuel.com

Quinn Emanuel Urquhart & Sullivan, LLP

295 Fifth Avenue

New York, NY 10016

Telephone: (212) 849-7000

Facsimile: (212) 849-7100

~~HARRIS M. MUFSON, *pro hac vice forthcoming*~~

~~hmufson@gibsondunn.com~~

~~GIBSON, DUNN & CRUTCHER LLP~~

~~200 Park Avenue~~

~~New York, New York 10166-0193~~

~~Telephone: 212.351.4000~~

~~MATTHEW D. MCGILL, *pro hac vice forthcoming*~~

~~mmcgill@gibsondunn.com~~

~~GIBSON, DUNN & CRUTCHER LLP~~

~~1700 M Street, N.W.~~

~~Washington, D.C. 20036-4504~~

~~Telephone: 202.955.8500~~

~~LAISSA SAMPLIN, SBN 314018~~

~~isamplin@gibsondunn.com~~

~~GIBSON, DUNN & CRUTCHER LLP~~

~~333 South Grand Avenue~~

~~Los Angeles, California 90071-3197~~

~~Telephone: 213.229.7000~~

~~CHRISTINE DEMANA, *pro hac vice forthcoming*~~

~~edemana@gibsondunn.com~~

~~GIBSON, DUNN & CRUTCHER LLP~~

~~2001 Ross Avenue, Suite 2100~~

~~Dallas, Texas 75201-2923~~

~~Telephone: 214.698.3100~~

25 Attorneys for Plaintiff

ELECTRIC SOLIDUS, INC. d/b/a SWAN BITCOIN

26

27

28

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ELECTRIC SOLIDUS, INC. d/b/a
SWAN BITCOIN,
a Delaware corporation,

Plaintiff,

10

PROTON MANAGEMENT LTD., a British Virgin Islands corporation; THOMAS PATRICK FURLONG; ILIOS CORP., a California corporation; MICHAEL ALEXANDER HOLMES; RAFAEL DIAS MONTELEONE; SANTHIRAN NAIDOO; ENRIQUE ROMUALDEZ; and LUCAS VASCONCELOS,

Defendants.

Case No. 2:24-cv-8280

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

**UNREDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

TABLE OF CONTENTS

	<u>Page</u>
1 NATURE OF THE ACTION.....	1
2 PARTIES.....	48
3 JURISDICTION AND VENUE.....	510
4 FACTS	815
5 <u>I. BITCOIN, THE BLOCKCHAIN, AND BITCOIN MINING.</u>	15
6 <u>III. ENTREPRENEURS CORY KLIPPSTEN AND YAN PRITZKER FOUND SWAN.</u>	818
7 <u>HIII. SWAN BUILDSESTABLISHES A SUCCESSFUL BITCOIN MINING BUSINESS.....</u> 9 <u>BUILT ON EXTENSIVE CONFIDENTIAL, PROPRIETARY MATERIAL THAT SWAN DEVELOPED.</u>	19
8 <u>IV. THE INDIVIDUAL DEFENDANTS CONTRACT TO PROVIDE SERVICES TO SWAN.</u>	36
9 <u>IVV. SWAN PROTECTS THE SECRECY OF ITS PROPRIETARY INFORMATION.</u>	1537
10 <u>IVVI. SWAN FORMSEXPANDS 2040 ENERGY, A FINANCING ARRANGEMENT TO RAISE CAPITAL FOR BITCOIN MINING.</u>	1842
11 <u>VVII. THE DEFENDANTS PLOT TO STEAL SWAN'S BUSINESS, CONFIDENTIAL AND PROPRIETARY INFORMATION, AND TRADE SECRETS.</u>	1943
12 <u>VVIII. THE DEFENDANTS EXECUTE THEIR SCHEME.</u>	2450
13 <u>VIX. SWAN INVESTIGATES, TRIES TO MITIGATE DISRUPTION, AND RESERVES RIGHTS.</u>	3063
14 <u>X. SWAN BRINGS THIS SUIT, AND THE DEFENDANTS PROVIDE FALSE EXCUSES FOR THEIR MISCONDUCT.</u>	67
15 <u>XI. DEFENDANTS CONTINUE TO USE SWAN'S CONFIDENTIAL INFORMATION AND TRADE SECRETS AND THEIR REPRESENTATIONS TO THE COURT PROVE HOLLOW.</u>	68
16 <u>VIXII. SWAN HAS BEEN, AND CONTINUES TO BE, IRREPARABLY HARMED BY DEFENDANTS AND THEIR COCONSPIRATORS' MISCONDUCT.</u>	3674
17 CAUSES OF ACTION	3777
18 PRAYER FOR RELIEF.....	4889
19 JURY DEMAND.....	4990

1 Plaintiff Electric Solidus, Inc. d/b/a Swan Bitcoin (“Swan”) complains and
2 alleges the following against Defendants Proton Management Ltd. (“Proton”),
3 Thomas Patrick Furlong, Ilios Corp., Michael Alexander ([“Alex”](#)) Holmes, Rafael
4 Dias Monteleone, Santhiran Naidoo, Enrique Romualdez, and Lucas Vasconcelos
5 ([the “Individual Defendants,”](#) and, collectively [with Proton](#), “Defendants”).

6 **NATURE OF THE ACTION**

7 ~~1. Over a period of several weeks in July and August, Defendants and other
8 agents hatched and executed a “rain and hellfire” plan to steal Swan’s billion-dollar
9 Bitcoin mining business.~~

10 ~~2. The individual Defendants (all former Swan consultants) conspired to steal
11 Swan’s highly proprietary and confidential Bitcoin mining business, technology,
12 trade secrets, property and personnel, and then resigned near simultaneously on the
13 evening of August 8, 2024, to join Defendant Proton—a copycat company
14 Defendant Holmes created for the sole purpose of using Swan’s stolen technology
15 and trade secret techniques and methods to usurp its mining business. Defendant
16 Naidoo is now Proton’s Chief Investment Officer, and virtually all the consultants
17 and employees who worked in Swan’s Bitcoin mining business—including Swan’s
18 former executives and General Counsel—currently work for Defendant Proton with
19 Swan’s confidential information and trade secrets.~~

20 1. This action stems from a coordinated effort by Defendants—former
21 consultants of Swan—to steal Swan’s entire billion-dollar Bitcoin mining business.
22 Over the course of six weeks, Defendants devised and executed a brazen plan—
23 described in their contemporaneous call notes as “rain and hellfire” by which
24 Defendants “would be exposed” on “Confidentiality and IP.” In connection with their
25 plan, Defendants downloaded over 1,300 documents, including those containing
26 confidential Swan information and source code files that outlined every step of
27 Swan’s proprietary Bitcoin mining strategies. Defendants also recruited senior Swan
28 employees to join them in resigning *en masse*. Thirteen Swan consultants and

1 employees resigned over the course of two days, many within minutes of one another.
2 They all went to the new company Defendant Holmes had incorporated six days
3 before they resigned—Defendant Proton. Swan seeks injunctive relief against all of
4 the Defendants, and damages against Proton, to put an end to Defendants' misconduct
5 and to compensate Swan for this egregious theft.

6 2. Founded in 2019, Swan is widely recognized as a leader in Bitcoin
7 services and operations. In 2023, Swan sought to expand its operations to Bitcoin
8 mining. “Bitcoin mining” refers to the process of generating Bitcoin, the first and
9 most widely-known digital, decentralized currency. If done efficiently at scale,
10 Bitcoin mining can be extremely profitable. At the time of this filing, a single Bitcoin
11 is worth approximately \$100,000. But as attractive as the rewards from Bitcoin
12 mining can be, mining operations are notoriously difficult to scale profitably.
13 Achieving profitably is a challenge, and minor gains in price, power efficiency, and a
14 host of other variables can be the difference between a profitable quarter and a
15 business going under.

16 3. Surveying the Bitcoin mining industry landscape in early 2023, Swan
17 saw a sector filled with companies that struggled first with identifying the best
18 locations to deploy Bitcoin mining equipment, and then with managing any mining
19 operations they did establish. Swan saw an opportunity to do better. After extensive
20 research into the market and its would-be competitors, Swan entered the Bitcoin
21 mining industry in earnest in mid-2023. Through a combination of proprietary
22 techniques and operational trade secrets that Swan developed and continuously
23 refined, Swan grew its Bitcoin mining operations at a breakneck and unprecedented
24 speed and scale. In less than one year, Swan was able to surpass what established
25 competitors had needed a half-decade to accomplish. In the first half of 2024, Swan’s
26 mining operations generated over [REDACTED] revenue, and were on pace to
27 continue to grow. But it all came to an abrupt halt on August 8, 2024, when
28 Defendants executed what they dubbed a “rain and hellfire” plan to steal Swan’s

1 Bitcoin mining business.

2 4. 3. The evidence of Defendants' ~~brazen~~ theft is overwhelming. ~~In Swan's~~
3 ~~system logs show that in~~ the days and weeks before—and in the time surrounding—
4 the ~~individual~~Individual Defendants' departure from Swan, ~~Defendant~~Defendants
5 Furlong, Naidoo, Monteleone~~cloned and~~ Romualdez, and Vasconcelos together
6 with Swan employee co-conspirators collectively exfiltrated over 1,300 documents
7 from Swan's databases, including hundreds of highly confidential Swan files and a
8 copy of the highly proprietary source code from Swan's Bitcoin mining monitoring
9 software—the Bitcoin Network Operating Center ("BNOC")~~directly from the~~
10 ~~secured coding platform GitHub and downloaded a copy of this Bitcoin mining~~
11 ~~"dashboard" outside of Swan's secure systems. Others involved in the conspiracy who~~
12 ~~now work with Proton (including Proton's current CEO ex Swan Chief Investment~~
13 ~~Officer and Head of Mining Raphael Zagury) also downloaded Swan's BNOC.~~
14 Among other things, these files included detailed and comprehensive information on
15 Swan's proprietary mining optimizations and a blueprint to operating the  Bitcoin
16 mining sites Swan managed, as well as operational blueprints for new sites that Swan
17 was preparing for deployment.

18 5. 4. In all, based purely on what Swan has been able to uncover to-date,
19 Defendants have misappropriated thousands of documents and files containing
20 Swan's proprietary and confidential information and trade secrets, including: mining
21 processes developed through testing, to optimize mining operations, mining
22 performance data, data related to Swan's mining inventory, mining operations and
23 machine performance and configuration, financial modeling and information, weekly
24 and monthly reports of all operations, ongoing deals with Swan business partners, and
25 pricing information. ~~And they attempted to cover their tracks~~ ~~Defendant~~
26 ~~Monteleone, for example, attempted to delete his Swan email address from his GitHub~~
27 ~~account.~~ Taken together, the stolen information provides a complete roadmap for the
28 success behind Swan's mining business. Proton's now-CEO Raphael Zagury himself

1 valued Swan's financial interest in the mining business at over [REDACTED] during his
2 time as Swan's Chief Investment Officer and Head of Mining, less than two months
3 before Defendants stole that business.¹

4 ~~5. At the same time Defendants were stealing the crown jewels from Swan's
5 Bitcoin mining business, they executed their pre-planned scheme to solicit Swan's
6 mining personnel; usurp Swan's funding arrangement; use Swan's financing partner,
7 cryptocurrency giant Tether, for "legal cover" for their misdeeds; and irreparably
8 harm Swan's ability to compete in the market. All of this is laid bare in Zagury's
9 notes, which also confirm Defendant Holmes was a ringleader.~~

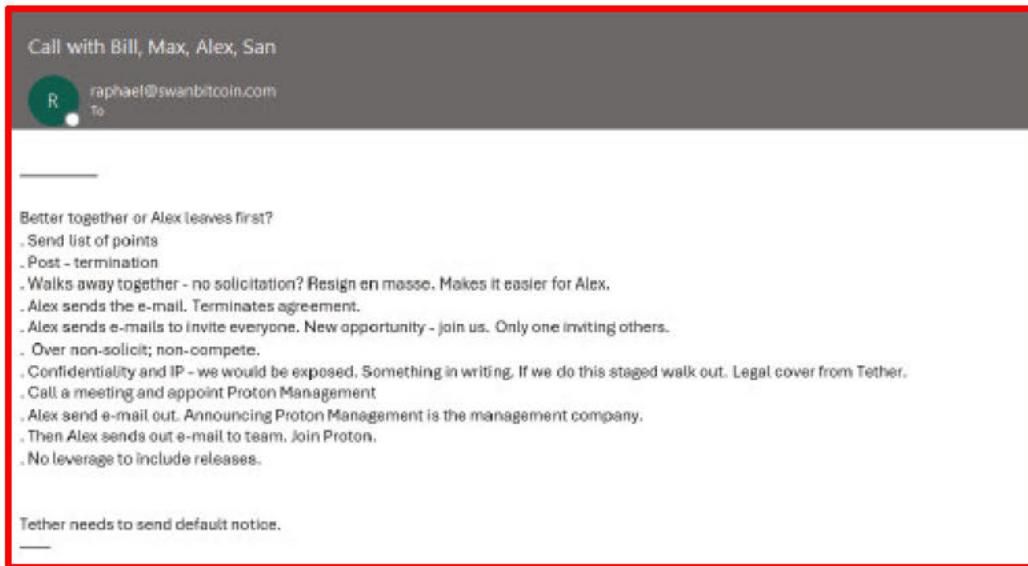
10 6. Virtually all the consultants and employees who worked in Swan's
11 Bitcoin mining business—including Swan's former Bitcoin mining executives and
12 General Counsel—currently work for Defendant Proton with Swan's confidential
13 information and trade secrets. Defendant Naidoo is now Proton's Chief Investment
14 Officer. Others involved in the conspiracy who now work with Proton include, as
15 noted above, Proton's current CEO (ex-Swan Chief Investment Officer and Head of
16 Mining) Raphael Zagury, as well as Swan's former Vice President of Institutional
17 Operations & Research Brett Hiley, former General Counsel Bill Belitsky, former
18 Financial Controller Tyler Effertz, former Technical Researcher Kartheek Sola, and
19 former outside counsel Maxwell Berg.

20 7. Contemporaneous notes taken of a call Defendants had on August 6
21 just two days before Defendants executed on their plan—show the elaborate steps
22 Defendants took to plan and hide their theft of Swan's trade secrets and employees.
23 These notes, taken by Zagury, and (perhaps inadvertently) saved to Swan's email
24 system, detail his conversation with Defendants Holmes and Naidoo. These notes

25
26 ¹ As detailed below, Swan and cryptocurrency giant Tether entered into a joint
27 venture under which Tether would provide capital for certain mining operations that
28 Swan wholly managed. That agreement entitled Swan to a share of the proceeds
generated from those operations. Zagury valued Swan's share of that mining business
profits alone at over [REDACTED]

1 document the conspirators' decision that the "rain and hell fire need to start" because
2 it was becoming "dangerous to [the] team to stay around" and "Bill [Belitsky, then
3 Swan's General Counsel and a co-conspirator, now at Proton] is being put at risk."
4 The notes also detail that the "[t]eam resignation and move with Tether needs to be
5 on *sic* tandem" and that the Defendants will need to "bring the heat" because with
6 the breaches of confidentiality and theft of "IP- we would be exposed. Legal cover
7 from Tether."

8 8. All of this is laid bare in Zagury's August 6, 2024 notes, excerpted on
9 the following page.



R

1 **From:** raphael@swanbitcoin.com
2 **Subject:** Call with Bill, Max, Alex, San
3 **Date: To:** August 6, 2024 at 03:08

4
5 [Better together or Alex leaves first?](#)

6 . [Send list of points](#)

7 . [Post - termination](#)

8 . [Walks away together - no solicitation? Resign en masse. Makes it easier for Alex.](#)

9 . [Alex sends the e-mail. Terminates agreement.](#)

10 . [Alex sends e-mails to invite everyone. New opportunity - join us. Only one inviting others.](#)

11 . [Over non-solicit; non-compete.](#)

12 . [Confidentiality and IP - we would be exposed. Something in writing. If we do this staged walk out. Legal cover from Tether.](#)

13 . [Call a meeting and appoint Proton Management](#)

14 . [Alex send e-mail out. Announcing Proton Management is the management company.](#)

15 . [Then Alex sends out e-mail to team. Join Proton.](#)

16 . [No leverage to include releases.](#)

17 [Tether needs to send default notice.](#)

18 [Team is getting to a point where is getting untenable. Bill is being put at risk. Dangerous to team to stay around. Team resignation and move with Tether needs to be on tandem.](#)

19 [Fortress is looming.](#)

20 [Last week you said you'd unleash hell on this guy.](#)

21 . [Alex leaves](#)

22 . [Breach](#)

23 . [Proton is assigned manager of 2040 assets](#)

24 . [All communications go to new management company](#)

25 . [ROFR gone if Alex resigns](#)

26 . [Written communications. Alex terminated his agreement. We don't need a board resolution.](#)

27 . [Bring the heat](#)

28 . [Giancarlo side convs. ?](#)

29 [Bill took himself out of Fortress situation. Cory interrogating him now. Trying to ruin Rapha's reputation. Sling a lot of shit. 10% will stick.](#)

30 [They cannot go and say we didn't do it by the book.](#)

31 [Rain and hell fire needs to start. Needs to be an exit, not a nice transaction.](#)

32 [\[REDACTED\] is moot when Alex leaves. Already moot now. Double covered the second](#)

33 [Alex leaves.](#)

34 [Bill interrogated if anyone asked him to join mining.](#)

35 [-----](#)

36 [>10% deposit to Taras](#)

37 [Status of Proton - update - formed, formalizing docs.](#)

1 9. The notes confirm that Defendant Alex Holmes was a ringleader.
2 Holmes incorporated Defendant Proton just six days before the resignations, and, per
3 the plan, he resigned first. Recognizing that their plan would violate the conspirators'
4 "non-solicit; non-compete" obligations to Swan, they plotted to stage their
5 resignations to give the false impression that Proton was an organic, "new
6 opportunity," rather than a copycat company built on Swan's "Confidentiality and IP"
7 and formed solely to usurp Swan's mining business.

8 10. Zagury's notes confirm that the Individual Defendants were well aware
9 that their theft of Swan's mining business and trade secrets would "expose" them to
10 further liability and breach their "Confidentiality and IP" obligations to Swan. The
11 solution was to secure "Legal cover from Tether," whereby the cryptocurrency giant
12 would threaten Swan with legal action to deter the company from seeking to enforce
13 its rights against the Defendants.²

14 11. 6. The scheme from Zagury's notesDefendants' scheme that Zagury laid
15 out in writing came to pass as planned: Defendant Michael "Alex" Holmes, Defendant
16 Naidoo, and Zagury coordinated their resignations from Swan on August 8, 2024.
17 Shortly thereafter, Holmes sent a message to Defendant Furlong, Defendant
18 Monteleone, Defendant Romualdez, Defendant Vasconcelos, and other Swan
19 conspirators signaling them that it was time to resign and join him, Defendant Naidoo,
20 and Zagury at Defendant Proton. Holmes made clear he wanted "to continue the
21 incredible work [the conspirators] ha[d] accomplished" at Swan, writing, "I don't
22 expect us to skip a beat," and inviting them to resign from Swan. Over the next few
23 hours, they did. That email and the resignations that followed were a preplanned fig
24 leaf, intended to leave behind a supposedly innocuous paper trail. But Defendants'

25 2 Following the plan, Tether has initiated sham litigation against Swan in the United
26 Kingdom, initially attempting to schedule a hearing on January 23 where Tether
27 would seek to have this entire litigation stayed—days before the scheduled filing of
28 this Amended Complaint, in an obvious attempt to intimidate Swan. The High Court
 of Justice in the Business and Property Courts of England and Wales rejected Tether's
 request for immediate relief and has set a hearing for the second half of February.

1 machinations to create this façade were all too obvious—video conference logs from
2 Swan’s system reveal that the scheme’s ringleaders, including Defendant Michael
3 “Alex” Holmes and Defendant Naidoo, were on near-constant calls for over six hours
4 on the day of the mass resignations, joined one-by-one by the other conspirators, at
5 least one of whom began a mass download of documents shortly after joining a call
6 with Defendants.

14 13. Since then, Defendants have continued to use the proprietary data,
15 information, and resources they stole to operate Defendant Proton's copycat Bitcoin
16 mining business and have continued to work with Swan's business partners and
17 vendors while trading on Swan's name—and the goodwill that Swan built with those
18 partners. Swan is left with no choice but to bring this action.

19 14. ~~8.~~ Defendants Furlong, Holmes/Ilios, Naidoo, Monteleone, Romualdez,
20 and Vasconcelos have also ignored Swan’s repeated demands—under their binding
21 contracts with Swan—that they return Swan’s devices and confidential, proprietary,
22 and trade secret information, despite previous representations to the Court that they
23 were willing to do so.

24 15. The Individual Defendants initially defended their actions by
25 emphatically claiming—in papers before this Court—that Defendant Proton’s “sole”
26 business was managing the operations of the joint venture between Swan and Tether.
27 See Dkt. 29-1 at 12 (“Proton and the Individual Defendants are working *only* for 2040
28 Energy.”) (emphasis added). That representation appears now to be (or always to

1 have been) false. Indeed, when asked directly if that representation is still true,
2 Defendants refused to answer.

3 16. ~~9.~~ Swan ~~has now been left with no choice: it has come~~ comes to this Court
4 to hold Defendants to account for their willful and unlawful misconduct, including
5 trade secret misappropriation, breach of contractual obligations to Swan, conversion,
6 and unfair competition; to immediately stop Defendants from continuing to
7 irreparably harm Swan by possessing and using Swan's stolen proprietary,
8 confidential, and trade secret information; and to recover the enormous economic
9 damages it has lost and the attorneys' fees it has incurred because of Defendants'
10 willful and unlawful theft of

11 Swan's Bitcoin mining business.⁴

12 **PARTIES**

13 17. ~~10.~~ Plaintiff Swan is an ~~industry-leading~~ industry-leading Bitcoin
14 financial services company that helps individuals and businesses purchase, save, and
15 invest in Bitcoin through its platform, and. Prior to Defendants' scheme, Swan was
16 also a leader in the field of Bitcoin mining. Swan is a Delaware corporation with its
17 headquarters located at 26565 W. Agoura Road, Suite 200, Calabasas, California
18 91302, which is in Los Angeles County in the Central District of California.

19 18. ~~11.~~ Defendant Proton is a British Virgin Islands Business Company with
20 its headquarters at Trinity Chambers, PO Box 4301, Road Town, Tortola, British
21 Virgin Islands. Its registered agent is Brittney Fahie, SHRM Trustees (BVI) Limited,
22 Trinity Chambers, PO Box 4301, Road Town, Tortola, British Virgin Islands. On
23

24 ⁴ ~~Swan seeks monetary damages in this action only against Defendant Proton. In~~
25 ~~contracts with Swan, Defendants Furlong, Holmes/Ilios, Monteleone, Naidoo,~~
26 ~~Romualdez, and Vasconcelos agreed to arbitrate claims related to their consulting~~
27 ~~relationships with Swan. However, those agreements state that Swan may seek~~
28 ~~injunctive relief in court for violations of any agreement regarding intellectual~~
~~property, confidential information, or noninterference. Swan anticipates pursuing~~
~~additional claims against Defendants Furlong, Holmes/Ilios, Monteleone, Naidoo,~~
~~Romualdez, and Vasconcelos in arbitration and reserves all rights associated with~~
~~doing so, without waiver.~~

1 information and belief, Defendant Holmes founded Proton on August 2, 2024, while
2 residing in California. While Proton was incorporated in the British Virgin Islands,
3 on information and belief, none of its employees or consultants resides or works in
4 that jurisdiction. On information and belief, agents of Proton, including the Individual
5 Defendants and former Swan employees, have conducted business on Defendant
6 Proton's behalf under the name "Elektron Energy."³

7 19. 12. Defendant Furlong is a former Investment Director of Swan. On
8 information and belief, Defendant Furlong resides in Western Australia. Pursuant to
9 his consulting agreement with Swan, Furlong agreed that, in any lawsuit brought
10 against him related to the services he provided Swan, he would consent to the personal
11 jurisdiction and venue in this District.

12 20. 13. Defendant Holmes is ~~a~~ the former Head of Business Development
13 ~~offer~~ Swan Mining. On information and belief, Defendant Holmes resides in Los
14 Angeles, California, which is located in Los Angeles County in the Central District
15 of California.

16 21. 14. Defendant Ilios is a California corporation with its headquarters
17 located at 664 South Mansfield Avenue, Los Angeles, California 90036, which is
18 located in Los Angeles County in the Central District of California. Defendant
19 Holmes contracted through Ilios to provide services to Swan. Pursuant to that
20 consulting agreement, Holmes (on behalf of Ilios) agreed that, in any lawsuit brought
21 related to the services he provided Swan, he would consent to the personal jurisdiction
22 and venue in this District.

23 22. 15. Defendant Monteleone is a former Investment Analyst of Swan. On

24 ³ It is unclear, based on information presently available to Swan, whether "Elektron
25 Energy" refers to a separate corporate entity created and managed by the Individual
26 Defendants and former Swan employees or whether Defendant Proton simply does
27 business as "Elektron Energy." As described below, the Individual Defendants and
28 former Swan employees have sometimes held themselves out to Swan's business
partners as agents of an "Elektron Energy," and utilized "elektron-energy.com" email
addresses. Swan expressly reserves the right to add Elektron Energy as a party to this
action, as appropriate following discovery.

1 information and belief, Defendant Monteleone resides in São Paolo, Brazil. Pursuant
2 to his consulting agreement with Swan, Monteleone agreed that, in any lawsuit
3 brought against him related to the services he provided Swan, he would consent to the
4 personal jurisdiction and venue in this District.

5 23. ~~16.~~ Defendant Naidoo is a former Investment Director of Swan. On
6 information and belief, Defendant Naidoo resides in London, United Kingdom.
7 Pursuant to his consulting agreement with Swan, Naidoo agreed that, in any lawsuit
8 brought against him related to the services he provided Swan, he would consent to the
9 personal jurisdiction and venue in this District.

10 24. ~~17.~~ Defendant Romualdez is a former Junior Investment Analyst of
11 Swan. On information and belief, Defendant Romualdez resides in Toronto, Ontario,
12 Canada. Pursuant to his consulting agreement with Swan, Romualdez agreed that, in
13 any lawsuit brought against him related to the services he provided Swan, he would
14 consent to the personal jurisdiction and venue in this District.

15 25. ~~18.~~ Defendant Vasconcelos is a former Software Engineer of Swan. On
16 information and belief, Defendant Vasconcelos resides in Ceilândia, Brazil. Pursuant
17 to his consulting agreement with Swan, Vasconcelos agreed that, in any lawsuit
18 brought against him related to the services he provided Swan, he would consent to the
19 personal jurisdiction and venue in this District.

JURISDICTION AND VENUE

21 26. ~~19.~~ This Court has original jurisdiction over this action pursuant to the
22 Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836, *et seq.*, and 28 U.S.C. § 1331.
23 This Court has supplemental jurisdiction over the other claims pleaded herein
24 pursuant to 28 U.S.C. § 1337.

25 27. ~~20.~~ This Court has personal jurisdiction over Defendant Furlong
26 pursuant to the forum-selection clause in his consulting agreement with Swan, dated
27 May 21, 2024, through which Furlong irrevocably submitted and “expressly
28 consent[ed] to the personal and exclusive jurisdiction and venue of the state and

1 federal courts located in ~~this District~~Santa Monica, California.” That agreement
2 provides that, while “all controversies, claims or disputes . . . arising out of, relating
3 to, or resulting from Consultant’s consulting or other relationship with [Swan] or the
4 termination of Consultant’s consulting or other relationship with [Swan], including
5 any breach of this agreement, shall be subject to binding arbitration pursuant to
6 California law,” “any party may also petition the court for injunctive relief where
7 either party alleges or claims a violation of any agreement regarding intellectual
8 property, confidential information or noninterference.” In this case, Swan only seeks
9 preliminary injunctive relief against Furlong, and alleges and claims Furlong violated
10 his agreements regarding Swan’s intellectual property, confidential information, and
11 noninterference. On information and belief, at all times when Furlong agreed to
12 commit and did commit the wrongdoing described below, he knew that Swan was
13 located in California.

14 28. 21. This Court has personal jurisdiction over Defendants Ilios and
15 Holmes because, on information and belief, Holmes resides in California. Ilios is a
16 California company, headquartered and with its principle place of business in that
17 state. On information and belief, at all times when Holmes agreed to commit and did
18 commit the wrongdoing described below, he was located in California, and knew that
19 Swan was located in California. Moreover, pursuant to the forum-selection clause in
20 Ilios’s consulting agreement with Swan, dated December 6, 2023, ~~through which~~
21 Holmes, on behalf of Ilios, irrevocably ~~submitted~~and “expressly consent[ed] to the
22 personal and exclusive jurisdiction and venue of the state and federal courts located
23 in ~~this District~~Santa Monica, California.” That agreement provides that, while “all
24 controversies, claims or disputes . . . arising out of, relating to, or resulting from
25 Consultant’s consulting or other relationship with [Swan] or the termination of
26 Consultant’s consulting or other relationship with [Swan], including any breach of
27 this agreement, shall be subject to binding arbitration pursuant to California law,”
28 “any party may also petition the court for injunctive relief where either party alleges

1 or claims a violation of any agreement regarding intellectual property, confidential
2 information or noninterference.” In this case, Swan only seeks preliminary injunctive
3 relief against Ilios and Holmes, and alleges and claims Ilios and Holmes violated their
4 agreement regarding Swan’s intellectual property, confidential information, and
5 noninterference.

6 29. 22. This Court has personal jurisdiction over Defendant Monteleone
7 pursuant to the forum-selection clause in his consulting agreement with Swan, dated
8 May 10, 2024, through which Monteleone irrevocably submitted and “expressly
9 consent[ed] to the personal and exclusive jurisdiction and venue of the state and
10 federal courts located in ~~this District~~Santa Monica, California.” That agreement
11 provides that, while “all controversies, claims or disputes . . . arising out of, relating
12 to, or resulting from Consultant’s consulting or other relationship with [Swan] or the
13 termination of Consultant’s consulting or other relationship with [Swan], including
14 any breach of this agreement, shall be subject to binding arbitration pursuant to
15 California law,” “any party may also petition the court for injunctive relief where
16 either party alleges or claims a violation of any agreement regarding intellectual
17 property, confidential information or noninterference.” In this case, Swan only seeks
18 preliminary injunctive relief against Monteleone, and alleges and claims Monteleone
19 violated his agreements regarding Swan’s intellectual property, confidential
20 information, and noninterference. On information and belief, at all times when
21 Monteleone agreed to commit and did commit the wrongdoing described below, he
22 knew that Swan was located in California.

23 30. 23. This Court has personal jurisdiction over Defendant Naidoo pursuant
24 to the forum-selection clause in his consulting agreement with Swan, dated July 26,
25 2023, through which Naidoo irrevocably submitted and “expressly consent[ed] to the
26 personal and exclusive jurisdiction and venue of the state and federal courts located
27 in ~~this District~~Santa Monica, California.” That agreement provides that, while “all
28 controversies, claims or disputes . . . arising out of, relating to, or resulting from

1 Consultant's consulting or other relationship with [Swan] or the termination of
2 Consultant's consulting or other relationship with [Swan], including any breach of
3 this agreement, shall be subject to binding arbitration pursuant to California law,"
4 "any party may also petition the court for injunctive relief where either party alleges
5 or claims a violation of any agreement regarding intellectual property, confidential
6 information or noninterference." In this case, Swan only seeks preliminary injunctive
7 relief against Naidoo, and alleges and claims Naidoo violated his agreements
8 regarding Swan's intellectual property, confidential information, and noninterference.
9 On information and belief, at all times when Naidoo agreed to commit and did commit
10 the wrongdoing described below, he knew that Swan was located in California.

11 31. 24. This Court has personal jurisdiction over Defendant Romualdez
12 pursuant to the forum-selection clause in his consulting agreement with Swan, dated
13 December 14, 2023, through which Romualdez irrevocably submitted and "expressly
14 consent[ed] to the personal and exclusive jurisdiction and venue of the state and
15 federal courts located in ~~this District~~Santa Monica, California." That agreement
16 provides that, while "all controversies, claims or disputes . . . arising out of, relating
17 to, or resulting from Consultant's consulting or other relationship with [Swan] or the
18 termination of Consultant's consulting or other relationship with [Swan], including
19 any breach of this agreement, shall be subject to binding arbitration pursuant to
20 California law," "any party may also petition the court for injunctive relief where
21 either party alleges or claims a violation of any agreement regarding intellectual
22 property, confidential information or noninterference." In this case, Swan only seeks
23 preliminary injunctive relief against Romualdez, and alleges and claims Romualdez
24 violated his agreements regarding Swan's intellectual property, confidential
25 information, and noninterference. On information and belief, at all times when
26 Romualdez agreed to commit and did commit the wrongdoing described below, he
27 knew that Swan was located in California.

28 32. 25. This Court has personal jurisdiction over Defendant Vasconcelos

1 pursuant to the forum-selection clause in his consulting agreement with Swan, dated
2 September 29, 2023, through which Vasconcelos irrevocably submitted and
3 “expressly consent[ed] to the personal and exclusive jurisdiction and venue of the
4 state and federal courts located in ~~this District~~ Santa Monica, California.” That
5 agreement provides that, while “all controversies, claims or disputes . . . arising out
6 of, relating to, or resulting from Consultant’s consulting or other relationship with
7 [Swan] or the termination of Consultant’s consulting or other relationship with
8 [Swan], including any breach of this agreement, shall be subject to binding arbitration
9 pursuant to California law,” “any party may also petition the court for injunctive relief
10 where either party alleges or claims a violation of any agreement regarding
11 intellectual property, confidential information or noninterference.” In this case, Swan
12 only seeks preliminary injunctive relief against Vasconcelos, and alleges and claims
13 Vasconcelos violated his agreements regarding Swan’s intellectual property,
14 confidential information, and noninterference. On information and belief, at all times
15 when Vasconcelos agreed to commit and did commit the wrongdoing described
16 below, he knew that Swan was located in California.

17 33. 26. This Court has personal jurisdiction over Defendant Proton because
18 Proton has purposefully directed unlawful activities towards California. Proton was
19 formed for the sole purpose of facilitating the theft of Swan’s mining business in
20 California while attempting to avoid any scrutiny from United States courts. Proton’s
21 employees and agents unlawfully stole Swan’s confidential and proprietary
22 information, including trade secrets. This was an in California. The scheme to leave
23 for Proton with Swan’s confidential information and trade secrets began while
24 Proton’s employees and agents were employed by and/or contracted with Swan. As
25 alleged below, and on information and belief, Proton continues to use that confidential
26 information and those trade secrets to this day. These are intentional act that was acts
27 expressly aimed at California, the effects of which were continue to be felt in
28 California because the stolen confidential and proprietary information were located

1 in California, Swan is headquartered in California, and Swan's principal place of
2 business is in California. On information and belief, Proton, through its agents and
3 employees, was aware of these facts, and thus, At the time the Defendants conspired
4 to and did steal Swan's confidential information and trade secrets, most if not all of
5 Defendant Proton's agents and employees were employees or consultants of Swan,
6 all of whom had signed agreements with Swan that identified Swan's address in
7 Calabasas, CA, and provided for venue in this district. Defendant Michael "Alex"
8 Holmes—who is Proton's founder, one of its most senior executives, and the
9 ringleader of Defendants' scheme—knew that Swan was headquartered in California
10 and that Swan's Chief Executive Officer resided in California (whose home Holmes
11 has visited). Thus Proton caused harm that it knew was likely to be suffered in
12 California.

13 34. Moreover, on information and belief, Holmes, who founded Proton and
14 is one of Proton's senior leaders, resides in California, and was physically located in
15 California during the period in which he formed Proton and, as an agent of Proton,
16 breached his contractual obligations with Swan and made decisions and participated
17 in calls and other communications with respect to the events giving rise to this lawsuit.
18 On information and belief, Defendant Holmes founded Proton on August 2, 2024,
19 from California, just six days before terminating his engagement with Swan and
20 encouraging other former Swan consultants and employees to do the same and to steal
21 Swan's confidential material, and now operates Proton from California. Swan is
22 unaware of any ties Alex Holmes has to the British Virgin Islands, and is not aware
23 of any Proton employees or consultants—all of whom, on information and belief, are
24 former Swan consultants and employees—who reside or work in that jurisdiction. It
25 was foreseeable to Proton that the harm to Swan would be inflicted in California.
26 Plaintiffs' claims against Proton arise out of Proton's actions that harmed Swan in
27 California.

28 35. 27. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b),

1 because a substantial portion of the events giving rise to the claims occurred in this
2 judicial district, the intellectual property that is the subject of this dispute is situated
3 in this judicial district, Defendants Ilios and Holmes reside in this District for purposes
4 of 28 U.S.C. § 1391, and nearly all of the Defendants expressly consented to this
5 venue pursuant to the contract terms excerpted above.

6 **FACTS**

7 **I. Bitcoin, the Blockchain, and Bitcoin Mining.**

8 36. Bitcoin is a decentralized cryptocurrency, invented in 2008. Unlike
9 traditional currencies, Bitcoin can be transferred without relying on third parties like
10 governments or banks. In a traditional banking system, for example, third-party banks
11 act as ledgers, recording customers' debits and credits and verifying that money can
12 move from one account to another. In that system, customers must rely on the bank
13 to approve and verify every payment. By contrast, Bitcoin is based on a decentralized
14 ledger, wherein every transaction in the Bitcoin network is recorded and verified, not
15 by a single entity like a bank, but by tens of thousands of nodes on a network. Anyone
16 in the world can join the Bitcoin network by connecting their computer to the network
17 and tracking transactions in the ledger.

18 37. Bitcoin is based on and implemented with several widely used
19 cryptographic tools. One such tool is the hash (sometimes called cryptographic hash).
20 A hash is a digital equivalent of a fingerprint for a piece of data, and is used in a wide
21 variety of cryptographic applications to verify the integrity of that data. The hash of
22 a piece of data is generated by inputting that data into what is called a cryptographic
23 hash function. The generated hash is unique to the input set of data but, critically,
24 cannot be used to reverse engineer the data (even with access to the cryptographic
25 hash function). Generating hashes is foundational to Bitcoin mining.

26 38. The tracking of Bitcoin transactions is accomplished through a
27 specialized distributed ledger called a blockchain. The blockchain is implemented as
28 a chronologically ordered list of blocks. Each block contains a hash of the previous

1 block, thus chaining the blocks together in chronological order.

2 39. Each block contains the record of roughly 2400 Bitcoin transactions.
3 When a Bitcoin user completes a transaction, the transaction is broadcast to other
4 network members with a digital signature (a cryptographic measure to prevent forged
5 transactions). A transaction does not become part of the blockchain until it is
6 successfully added to a block, via a process called “Bitcoin mining.”

7 40. Bitcoin mining is the process of adding blocks to the blockchain and, in
8 doing so, verifying and securing Bitcoin transactions. The process is essential to
9 Bitcoin’s functioning as a decentralized ledger. The network incentivizes members
10 to verify transactions by holding a “contest” to determine who wins the right to add
11 the next block, and the corresponding transactions, into the blockchain. Miners enter
12 the contest by repeatedly trying different inputs to produce a hash that meets the
13 network’s difficulty target, validating transactions and securing the blockchain in the
14 process. The winning miner receives fees from the added transactions and is issued
15 Bitcoin as a reward.⁴ A new block is added (and thus a new “contest” happens)
16 roughly every ten minutes.

17 41. The contest is essentially a lottery, that miners expend significant time
18 and resources entering. The faster a miner can produce more hashes (i.e., the higher
19 the “hash-rate”), the more entries they have in each ten-minute lottery, and the more
20 likely they are to win the contest. Once the winning hash is submitted, other Bitcoin
21 users will add the block corresponding to the winning hash to their blockchain ledgers
22 and the contest begins again.

23 42. While the basic method for generating hashes is known to anyone
24 seeking to mine Bitcoin, the many complex strategies for mining Bitcoin effectively
25

26

⁴ The amount of Bitcoin issued to a winning miner decreases over time.
27 Approximately every four years, the amount of Bitcoin generated is halved. At
28 present, a winning miner receives 3.125 Bitcoin. That amount will be the payout until
the next “Bitcoin halving,” which is expected to be in 2028. This built-in mechanism
to decrease the supply of Bitcoin acts as a pressure on the price of Bitcoin.

1 (and profitably) are not, and require much more than simply plugging in a computer
2 and producing hashes. Mining is extremely expensive and requires deep expertise, as
3 well as data-driven testing, to participate profitably at scale. Miners use application-
4 specific integrated circuits (“ASICs”), specialized computerized devices used for the
5 sole purpose of mining. In addition to the cost of these machines, Bitcoin mining
6 consumes significant amounts of energy, and mining operations must be constantly
7 monitored to ensure efficient energy use, to prevent the equipment from overheating,
8 and to optimize the deployed equipment. The more computational resources an
9 operation has, the higher its chances to secure Bitcoin through the contest.
10 Minimizing electricity costs means that with a given amount of money, one can do
11 more mining, generate higher output, and achieve greater profitability. If energy and
12 mining operations are not managed efficiently, the hardware, electricity and other
13 costs necessary for Bitcoin mining can exceed the value of the mined Bitcoin.

14 43. Bitcoin miners also often work together in mining “pools”—groups of
15 miners who share their computing power over a network. When one miner in the pool
16 generates a winning hash, all miners in the pool are rewarded based on the amount of
17 hashing power each contributes.. Mining pools help make revenue for miners more
18 predictable in what is an extremely volatile market.

19 44. Given the high costs of entry, intense competition, and volatile market
20 conditions, companies that mine Bitcoin generally operate on thin profit margins.
21 Small gains in cost or energy efficiency are crucial to securing an edge over
22 competitors, maximizing profits, and weathering swings and crunches in the market.

23 45. If done well, however, Bitcoin mining can be extremely lucrative. The
24 value of a single Bitcoin on the date of this filing (January 27, 2025) is approximately
25 \$100,000 (up from approximately \$63,000 when this action was first filed on
26 September 25, 2024). At the current market rate, the 3.125 Bitcoin awarded with the
27 creation of each new block equates to over \$300,000 awarded to miners **every ten**
28 **minutes.**

1 **II. I. Entrepreneurs Cory Klippsten and Yan Pritzker Found Swan.**

2 46. 28. Cory Klippsten founded Electric Solidus, LLC—what is now Electric
3 Solidus, Inc., doing business as Swan Bitcoin—in June 2019, with Yan Pritzker
4 joining the Companycompany later that year.

5 47. 29. Klippsten, Swan’s Chief Executive Officer, has always been
6 passionate about technology. Before receiving an MBA from the University of
7 Chicago, Klippsten worked at Microsoft and Morgan Stanley, and later worked at
8 Google and McKinseyMcKinsey and Google. Klippsten entered the world of early-
9 stage tech in 2013 as an investor and advisor to venture-backed startups, experiencing
10 significant success. He began deep research into Bitcoin in 2017, resulting in a desire
11 to shift all of his professional efforts toward promoting adoption of the currency.
12 Klippsten is a partner, investor, and advisor of multiple Bitcoin-focused venture
13 capital firms, and over the years has served as an investor and advisor to more than
14 60 early stageearly-stage tech companies. He originally founded Electric Solidus,
15 LLC (now Electric Solidus, Inc. d/b/a Swan Bitcoin) as a Bitcoin gifting service; its
16 first product was called “GiveBitcoin.”

17 48. 30. Pritzker, Swan’s Chief Technology Officer, is a serial—tech
18 entrepreneur and remainsfounder of multiple successful software start-ups. He has
19 over two decades of experience in software development and product direction, and
20 is one of the most trusted authorities on Bitcoin.

21 49. 31. The last startup Pritzker co-founded, Reverb, was sold to Etsy in
22 2019. He then That same year, he authored “Inventing Bitcoin,” an introductory text
23 for persons new to Bitcoin. Pritzker’s chapters explaining Bitcoin mining are oft-
24 praised and shared by industry insiders. Bitcoin represents much more to Pritzker
25 than an online currency; it represents freedom. Pritzker grew up in the Soviet Union,
26 where prices were fixed, capital was controlled, and the economy failed to supply
27 basic goods. Those experiences spurred his interest in Bitcoin as a portable,
28 decentralized currency.

1 50. ~~32.~~ In January 2020, Klippsten and Pritzker rebranded the
2 ~~Company~~company as Swan Bitcoin and set out to offer customers a truly user-focused
3 product that combined Klippsten's passion for Bitcoin and expertise ~~for~~in building
4 tech companies with Pritzker's engineering experience and deep knowledge and
5 belief in the currency. Over the next few years, Klippsten and Pritzker grew Swan
6 into an ~~industry leading~~industry-leading Bitcoin financial services company that
7 educates and helps individuals, businesses, and retail traders purchase, save, and
8 invest in Bitcoin and related products and services through an accessible and user-
9 friendly interface with lauded client service.

10 51. Today, Swan has over [REDACTED]
11 [REDACTED] Bitcoin worth more than [REDACTED] has been purchased
12 through Swan, and Swan currently has about [REDACTED] assets under management
13 ("AUM").

14 **III. H. Swan ~~BUILDS~~Establishes a Successful Bitcoin Mining Business ~~Built~~
on Extensive Confidential, Proprietary Material that Swan Developed.**

16 52. ~~33.~~ After several years of success, Swan planned to pursue opportunities
17 in the Bitcoin ~~“mining”~~ space to further supplement its Bitcoin financial services
18 business. Klippsten and ~~Prizker~~Pritzker had served as Board Advisors for Riot
19 Platforms, a Bitcoin mining and digital infrastructure company, from 2019 through
20 2022, and shared a keen interest in playing a role in the mining space over time. They
21 had monitored and grown familiar with the industry, which they felt was largely filled
22 with companies who were either unable to scale their Bitcoin mining operations or
23 otherwise failing to develop business at potential mining sites. Swan created a new
24 “Institutional” division in January 2023, with a primary focus on developing financial
25 services for investors and operators in Bitcoin mining.

26 34. ~~Bitcoin mining is the computerized process by which individuals and~~
27 ~~entities verify and secure Bitcoin transactions and obtain Bitcoin. Unlike traditional~~
28 ~~currencies, Bitcoin can be transferred between people or computers without relying~~

1 on ~~trusted~~ third parties like governments or banks. In a traditional banking system,
2 for example, ~~third party~~ banks act as ledgers, recording customers' debits and
3 credits and verifying that money can move from one account to another. In that
4 system, customers must rely on the bank to approve and verify every payment. ~~But~~
5 Bitcoin is based on a decentralized ledger, wherein every transaction in the Bitcoin
6 network is recorded and verified, not by a single entity like a bank, but by ~~hundreds~~
7 of thousands of ~~members~~ on a network. Anyone in the world can join the Bitcoin
8 network by connecting their computer to the network and tracking transactions in
9 the ledger.

10 ~~35. For this network to function, members must verify the transactions.~~
11 ~~Bitcoin incentivizes network members to verify transactions by holding a "contest"~~
12 ~~to determine (a) who wins the right to enter these transactions into the ledger and (b)~~
13 ~~who has the chance to obtain new Bitcoin. Each "miner" seeking to participate~~
14 ~~attempts to solve a puzzle on the network. Every ten minutes, one miner is chosen at~~
15 ~~random and that miner wins the right to record all Bitcoin transactions into the~~
16 ~~decentralized ledger that took place since the last contest. That miner also gets to~~
17 ~~present its solution to the puzzle, and, if it provides the correct answer, the miner~~
18 ~~announces that answer to the rest of the network along with the input the miner used~~
19 ~~and the transactions it has recorded. If the miner completes this full process~~
20 ~~correctly, it is paid a fee, and the transactions it has announced are called a "block."~~
21 ~~Every other computer on the Bitcoin network validates the block by confirming that~~
22 ~~the solution to the puzzle is correct, that the block does not contain any invalid~~
23 ~~transactions, and that the history within it does not conflict with prior blocks. Those~~
24 ~~computers then all write the block into their copy of the ledger, appending it into the~~
25 ~~existing chain of blocks, producing a "blockchain."~~ The successful miner gets the
26 ~~Bitcoins on the block, and the process repeats ten minutes later.~~

27 ~~36. Bitcoin mining can be extremely lucrative; the value of a single Bitcoin~~
28 ~~on the date of this filing (September 25, 2024) is approximately \$63,000. But~~

1 ~~mining is also extremely expensive and requires deep expertise, as well as data~~
2 ~~driven testing through trial and error, to participate profitably at scale. Mining~~
3 ~~requires highly advanced computers that are specially designed to continuously run~~
4 ~~the computations needed to enter the “contest” multiple times. In addition to the cost~~
5 ~~of these machines, Bitcoin mining consumes significant amounts of energy, and~~
6 ~~mining operations must be constantly monitored to ensure efficient energy use,~~
7 ~~prevent overheating of the equipment, and optimize the equipment deployed. The~~
8 ~~more computers an operation has (and therefore, the more energy it uses), the higher~~
9 ~~its chances to secure Bitcoin through the contest. Lower electricity cost means more~~
10 ~~mining, higher output, and greater profitability. If this energy and the mining~~
11 ~~operations are not managed efficiently, the hardware, electricity and other costs~~
12 ~~associated with Bitcoin mining can easily exceed the value of the mined Bitcoin.~~

13 53. 37. To start Swan’s Bitcoin mining business, it brought on several of the
14 largest Bitcoin miners as sponsors of its Pacific Bitcoin conferences in November
15 2022 and October 2023, and of Swan’s media properties from 2022 to the present. In
16 May 2023, Swan had begun planning what would become an incredibly
17 successfulalso hosted a “VIP Mining Industry VIP event the day prior to its Pacific
18 BitcoinDay” at its annual conference in October 2023. With the addition, attended by
19 CEOs and senior executives of most of the top 10 mining companies, along with
20 numerous Wall Street bankers and analysts. With the hiring of Guilherme Gomes
21 (laterwho eventually became Swan’s President, and was previously employed by Ray
22 Dalio’s famed investment manager Bridgewater) in May 2022 and Raphael Zagury
23 (laterwho eventually became Swan’s Chief Investment Officer), and was previously
24 a long-tenured Wall Street investment banker) in December 2022, Swan began
25 planning in earnest to serve large Bitcoin miners in early 2023 as clients of its Swan
26 Institutional unit.

27 54. 38. On June 1, 2023, Klippsten learned of the DAMEa Bitcoin mining
28 site in Tasmania, Australia, from a Swan employee who had invested in the project in

1 2021. At the time, the site was operated by an Australian-based Bitcoin mining
2 company, DAME. Klippsten immediately recognized the ~~project's~~DAME site's great
3 potential: to build a large new Bitcoin mining operation site in a jurisdiction with a
4 favorable regulatory and financing regime and extremely low energy costs. That
5 evening, Klippsten mentioned the ~~company~~site to his friend Defendant Holmes, who
6 told Klippsten that he was aware of ~~the company~~DAME and that he was working to
7 secure a Series A round of funding for ~~DAME~~the site. Klippsten and Holmes agreed
8 that Swan would work to source investment for the ~~deal~~fundraise.

9 55. 39. Early the next day, Klippsten spoke with Giancarlo Devasini of
10 Tether, a cryptocurrency company, ~~early the next day~~ and they agreed that Tether
11 would provide funding for Swan to expand operations at the site, with Swan managing
12 the mining investment. Swan and Tether, through Tether's subsidiary Zettabhash Inc.,
13 entered into a joint venture (along with a third-party individual who originally helped
14 to facilitate the relationship) known as 2040 Energy (a reference to the jersey numbers
15 of Klippsten's favorite basketball players, Gary Payton and Shawn Kemp), which
16 would govern the arrangement at that site, as memorialized in a Shareholders
17 Agreement dated July 28, 2023. With years of experience and contacts in the Bitcoin
18 industry, and now a foothold deal and a financial backer, the Swan team quickly set
19 about exploring additional opportunities in the mining space.

20 56. 40. Within a month, Swan was aggressively purchasing as many Bitcoin
21 mining machines as it could find, ~~and it~~through a new initiative it named "Project
22 Corner" (as in, "corner the market"). After analyzing and researching potential
23 locations to deploy those machines—including assessing what types of and how many
24 machines to deploy where, and modeling deployment scenarios to maximize
25 electricity gains—Swan began contracting with host sites ~~to plug them in and start~~
26 ~~mining~~. Defendant Holmes consulted to Swan for the sourcing of both machines and
27
28

1 sites.²⁵

2 57. ~~41.~~ Swan also started hiring and building out its mining team—, who
3 would manage the day-to-day operations at mining sites. Those interested and
4 working in the Bitcoin space (“Bitcoiners”) were eager to join—the Swan brand was
5 highly respected and ~~the Company~~Swan had established itself as a trusted authority
6 on Bitcoin and among the most desirable places to work in the industry. Job postings
7 for Swan often ~~resulted in~~attracted hundreds of applications from highly qualified
8 individuals both inside and outside of the industry, heavily aided by Swan’s
9 ownership of the dominant Bitcoin industry job board, Bitcoinerjobs.com (created by
10 Klippsten in 2021).

11 58. ~~42.~~ Swan’s then-Chief Investment Officer, Raphael Zagury, also was at
12 the forefront of the operation. Swan had originally hired Zagury in December 2022,
13 and he served on ~~the Company’s~~Swan’s executive team. As Chief Investment
14 Officer, Zagury believed Swan could grow its investment in Bitcoin mining
15 substantially.

16 59. ~~43.~~ In July 2023, Zagury started managing the Tasmanian mining
17 operations for Swan, and Swan’s mining team grew from approximately five to twelve
18 dedicated employees and independent contractors—eventually including Vice
19 President of Institutional Operations & Research Brett Hiley, Financial Controller
20 Tyler Effertz, Technical Researcher Kartheek Sola, and Staff Accountant Aleksander
21 Dozic, and consultants (and other individual Defendants) Investment Director
22 Thomas Patrick Furlong, Special Situations Analyst Santhiran Naidoo, Investment
23 Analyst Rafael Dias Monteleone, Junior Investment Analyst Enrique Romualdez,
24 and Software Engineer Lucas Vasconcelos. Defendant Holmes consulted (~~Operating~~
25 ~~Manager~~)—through his personal company, Defendant Ilios, and Swan retained
26

27 ²⁵ Swan and Holmes would negotiate and reduce to writing their relationship with a
28 consulting agreement Defendant Holmes signed on behalf of his personal company
Defendant Ilios before the end of the year that included backpay.

1 Maxwell Berg, of MB Law LLC, to serve as Swan's external Associate General
2 Counsel tasked with assisting in various corporate and commercial matters. Swan's
3 executive team, including CEO Klippsten, then-President Gomes, and then-General
4 Counsel Bill Belitsky also oversaw the new mining team.

5 60. ~~44.~~ At the same time, Swan built out the proprietary aspects of its
6 business and mining operations that would distinguish ~~the Company~~ Swan from its
7 competitors.⁶

8 61. First, Swan developed, utilized, and refined methods to rapidly
9 investigate and identify potential mining sites. Few locations offer even the potential
10 for a successful Bitcoin mining datacenter. In the mining industry, it is not uncommon
11 to take months or longer to identify even one site with realistic potential, followed by
12 even more time to negotiate the necessary agreements to operate. Swan grew its
13 overall mining capacity and hash-rate at an unprecedent rate because [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 62. ~~45.~~ First, Swan also spent significant time and money developing ~~its~~
24 ~~Bitcoin Network Operating Center (“BNOC”), a complex proprietary platform for~~
25 ~~managing mining data and analytics.~~ [REDACTED]

26
27 ⁶ Swan will further identify the specific trade secrets that it has reason to believe
28 Defendants misappropriated in a trade secret identification statement pursuant to the
Court's January 7, 2025 Order Setting Scheduling Conference. See Dkt. 95 at 6-7.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] ~~It can provide a real time detailed look into mining operations and~~
5 ~~can quickly pinpoint problems~~ advantageous relationships with vendors that it
6 contracted with to service its mining sites, building upon its existing strong reputation
7 in the Bitcoin community. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 46. ~~Swan developed and owns BNOC, quickly making the Company an~~
12 ~~industry leader in Bitcoin mining in two primary ways:~~ [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 63. Swan derived value from keeping the methods and processes it uses to
19 identify and qualify potential mining sites secret in several ways. First, Swan's ability
20 to intelligently select sites at which to run mining operations carried immense value
21 and represented a competitive advantage to Swan. Each site enabled Swan to
22 effectively mine Bitcoin and contributed to Swan's overall growth and success in the
23 Bitcoin mining industry. If others knew of the sites that Swan learned of, and how
24 Swan identified and qualified those sites, others could have competed with Swan to
25 set up mining operations at those sites, which may have forced Swan to execute less
26 favorable agreements at those sites or caused Swan to lose sites altogether to its
27 competitors.

28 64. ~~47. Second~~, Swan developed, through extensive testing, proprietary

1 hash-rate optimization techniques for Bitcoin mining.³ [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 65. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 66. ~~48. Swan's~~ Swan also developed techniques related to "overclocking and
15 underclocking" ~~methods are one of these techniques~~ its Bitcoin-mining machines.
16 "Overclocking and underclocking" refers to specialized procedures that safely alter
17 the performance of mining hardware to optimize its power beyond manufacturer
18 specifications, without compromising stability. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED] — Giancarlo Devasini of Tether
22 recognized that Swan's overclocking methods were unique and held significant value,
23 describing the results of those methods to others as "amazing."

24 67. Swan also rigorously tested and documented analysis of various cooling
25 techniques. Heat is a significant byproduct of Bitcoin mining. As such, mining
26 centers require significant efforts to keep facilities cool. [REDACTED]

27 ³ ~~"Hash rate" refers to the computational power of mining hardware, measured by~~
28 ~~the number of calculations ("hashes") it performs per second.~~

1

2

3

4

68. Other optimization techniques include [REDACTED]

5

6

7

8

9

10

11

12

69. 49. Third, Swan also developed proprietary financial modeling, data analytics, and financial monitoring tools. [REDACTED]

15

16

17

18

70. All of these techniques and methods were proprietary to Swan as it had uniquely developed them through its own extensive and non-public experimentation, analysis, and testing.

22

71. Swan maintained comprehensive spreadsheets and other documentation detailing its use of these techniques, as exemplified by the following screenshots of documents that the Defendants and their conspirators stole prior to their resignation from Swan.

26

27

28

⁴ ~~A mining “pool” is a group of cooperating miners who agree to share the fees and new Bitcoin associated with winning a “block,” as outlined in paragraph 35 above. Swan and other Bitcoin miners at times enter into these pools with other miners.~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 72. Swan derived value from keeping these optimization techniques and
2 modeling methods secret. Each of these optimizations, individually and especially
3 when used in tandem, enabled Swan to tailor its operational decisions to the unique
4 circumstances of each mining site. These optimizations provided Swan with a
5 competitive edge and helped Swan to grow its overall hash rate relative to other
6 competing miners

7 73. *Fourth*, Swan spent significant time and money developing and writing
8 the source code for its Bitcoin Network Operating Center (as above, “BNOC”), a
9 complex proprietary platform for managing mining data and analytics. Swan decided
10 to develop its own platform after concluding that no comparable platform was
11 commercially available. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] The future product roadmap for BNOC prior to the resignation
19 of the conspirators included significant input from current and former Swan
20 employees.

21
22
23
24
25
26
27
28

1 74. As reflected in exemplary screenshots from BNOC's interface, the scope
2 of the software's analytical tools are expansive:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2

3

4

5

6

7

8

9

10

11

12

13 75. BNOC provides a real-time, detailed look into Swan's mining
14 operations, allowing Swan to quickly pinpoint problems, make necessary corrections
15 or optimizations, and ensure profitability.

16 76. Swan developed and owns BNOC, which was created by Swan
17 employees and consultants, and named by Klippsten. BNOC quickly made Swan an
18 industry leader in Bitcoin mining in two primary ways: [REDACTED]

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12

13 77. BNOC was sufficiently valuable that Giancarlo Devasini, Tether's Chief
14 Financial Officer, repeatedly expressed his keen interest in acquiring Swan's BNOC
15 technology, telling others in as early as November 2023 that he (Devasini) "couldn't
16 stop looking at it," saying "*I want to own this.*" Devasini viewed the platform's
17 dashboard constantly.⁷ Praising BNOC, Devasini juxtaposed the comprehensive
18 nature of Swan's tool with Tether's other Bitcoin mining experiences, noting that one
19 mining company Tether had funded provided updates regarding mining activity via
20 just one spreadsheet cell of information per day.

21 78. Indeed, Raphael Zagury, one of Swan's former employees who helped
22 lead the raid of Swan's mining business and is now the CEO of Proton, said of BNOC
23 shortly after its initial deployment in January 2024: "We've developed a whole new
24 tool just for analytics called B:NOC. Best in class according to everyone who saw it
25 (a group that includes Bitcoin developers, public miners and others)." Zagury also

26 ⁷ Swan provided Tether with access to the BNOC *interface*, subject to a
27 confidentiality agreement that required Tether to keep any information it received
28 through that platform confidential. Swan never provided Tether with BNOC's
underlying source code or other under-the-hood functionalities.

1 stressed the importance of keeping BNOC confidential to Swan, saying “*We need to*
2 *be super careful on what we share externally*” He concluded his message by
3 reiterating: “*FINALLY A just being a bit repetitive but it’s important to say again: KEEP EVERYTHING ABOUT SWAN MINING internal only.*” Consistent with
4 that, while Swan occasionally showed outsiders aspects of the BNOC interface, Swan
5 would only reveal Swan’s actual mining data subject to confidentiality agreements,
6 and never shared the source code.

7 79. Swan derived value from keeping BNOC’s data and source code secret.
8 BNOC enabled Swan to grow its hash-rate in a cost-effective manner, including by

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] These monitoring and testing capabilities gave
13 Swan an advantage over its competitors. If competitors had access to BNOC’s
14 capabilities and data, they would be able to mine Bitcoin more effectively, and
15 therefore reduce Swan’s hash-rate share of the overall Bitcoin network, thus lowering
16 the amount of Bitcoin Swan could mine (and, in turn, the profits from Swan’s mining
17 operations).

18 80. All of these techniques were developed by Swan employees and
19 consultants for Swan, while those employees and consultants were employed or
20 engaged by Swan, and within the scope of their employment or consultancy.

21 81. Indeed, prior to stealing Swan’s mining business, the Individual
22 Defendants and their co-conspirators frequently referred to the techniques, methods,
23 software, and other intellectual property that Swan developed—including BNOC—
24 as belonging to Swan.

25
26
27
28

1 82. For example, on November 9, 2023, Swan's then-CIO Zagury referred
2 to BNOC in internal Swan messages over Slack as "our [Swan's] proprietary analytics
3 tool that gives realtime data on our mining sites."

5 |  rapha-yan-gui-cory

6 |  **Raphael Zagury** Nov 9th, 2023 at 11:07 AM
"BTW, we also have B-NOC, our proprietary analytics tool that gives realtime data on our mining sites."

8 83. As another example, on January 4, 2024, when onboarding Defendant
9 Romualdez to Swan, Zagury introduced BNOC to Romualdez as “our mining
10 dashboard,” providing Romualdez with login credentials to his Swan-issued email
11 address:

 **Raphael Zagury** 6:40 AM
Welcome [@Enrique Romualdez](#)!
I'm also sending you B:NOC login credentials to your Swan e-mail.

 1 

6:40 B:NOC is our mining dashboard. We'll walk you through soon.

 **Enrique Romualdez** 6:55 AM
Thanks, [@Rapha Zagury](#) - I'm in!

20 Swan's efforts to make a cheaper and faster operation—and Swan maintaining its
21 methods as secret—paid dividends, setting it apart from others in the industry. As
22 Zagury put it in a Slack message on January 9, 2024: “Swan deployed hash rate faster
23 than any other company in Bitcoin. We can show that in numbers. It’s a killer metric
24 that speaks volumes on the power of our brand and people.” Indeed, as laid out in
25 contemporary Swan documents from June 2024—mere months before the Defendants
26 stole Swan’s mining business—Swan’s unique approach to Bitcoin mining drove
27 unmatched growth in its mining operations:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 84. Swan fleet efficiency was an impressively low [REDACTED]
26 soundly beating other efficiencies published by major competitors, whose rates
27 ranged from 25 to 38 Joules per terahash. As a result, while these same mining
28 competitors often saw mining costs of more than \$50,000 per Bitcoin, Swan's costs

1 were closer to [REDACTED].

2 85. As a result of Swan's techniques, efficiency, and ability to scale, the
3 company controlled over 1.44% of total *global* Bitcoin hash rate as of April 2024. In
4 the first half of 2024, Swan generated [REDACTED]
5 [REDACTED] from its mining operations alone. This degree of success was only
6 possible with the competitive edge that Swan gained from keeping its proprietary
7 methods and tools confidential, as summarized above.

8 86. By July 2024, Swan had developed and was managing [REDACTED] mining sites
9 worldwide, [REDACTED]

10 [REDACTED] Swan's rapid ability to scale its mining
11 operations from virtually nothing to match or exceed more-established competitors'
12 mining capacity in less than a year was unheard of in the industry.

13 87. Indeed, in June 2024, as Swan began the process of raising investment
14 through a Series C fundraising round, Swan tasked Zagury (its then-Chief Investment
15 Officer) with determining the value of Swan's mining business. As reflected in Slack
16 messages from Zagury to Swan in early June, Zagury valued Swan's share of its
17 mining operations at over [REDACTED]. He repeatedly emphasized the accuracy of
18 that projection ("It's the right number") and even suggested that number *undervalued*
19 Swan's mining business: "This exercise made me even more bullish. [REDACTED] is low."

20 88. Given his position at Swan, Zagury also engaged directly with potential
21 investors, including taking on a role in Swan's direct negotiations with Tether,
22 meeting several times in June and July with Zach Lyons (a founder and principal of
23 Marlin Capital Partners, Tether's investment manager) to negotiate fundraising from
24 Tether. Validating Zagury's assessment of Swan's potential profitability, on June 28,
25 2024, Lyons and Tether confirmed to Swan that Tether was offering to lead Swan's
26 Series C fundraising round with a \$25 million investment that would value Swan's
27 business at \$1 billion.

28

1 **IV. The Individual Defendants Contract to Provide Services to Swan.**

2 89. Each of the Individual Defendants contracted with Swan to provide
3 consulting services, pursuant to substantially similar consulting agreements (the
4 “Consulting Agreements”).

5 90. Defendant Naidoo entered into a Consulting Agreement with Swan on
6 July 26, 2023. See Ex. A. Naidoo agreed to act as a Special Situations Analyst for
7 Swan, responsible for, among other things, monitoring and evaluating the
8 performance of Bitcoin mining operations.

9 91. Defendant Vasconcelos entered into a Consulting Agreement with Swan
10 on October 1, 2023. See Ex. B. Vasconcelos agreed to act as a Software Engineer
11 for Swan.

12 92. Defendant Holmes entered into a Consulting Agreement with Swan on
13 December 6, 2023, on behalf of Defendant Ilios, the entity through which Defendant
14 Holmes contracted to provide his consulting services. See Ex. C. Holmes agreed to
15 provide Swan with a variety of services related to the company’s mining operations.
16 Recognizing that Defendant Holmes’s engagement with the company had begun
17 earlier that year, Swan agreed to pay, and did pay, Defendant Holmes backpay
18 retroactive to July 1, 2023.

19 93. Defendant Romualdez entered into a Consulting Agreement with Swan
20 on December 14, 2023. See Ex. D. Romualdez agreed to act as a Junior Investment
21 Analyst for Swan, responsible for, among other things, monitoring and evaluating the
22 performance of Bitcoin mining operations.

23 94. Defendant Monteleone entered into a Consulting Agreement with Swan
24 on May 13, 2024. See Ex. E. Monteleone agreed to act as an Investment Analyst for
25 Swan, and provide Swan with a variety of services related to the company’s mining
26 operations, including monitoring and assessing Swan’s Bitcoin mining sites and
27 developing tools and metrics to assess site performance, pinpoint potential
28 bottlenecks, and streamline the mining process for enhanced efficiency.

1 95. Defendant Furlong entered into a Consulting Agreement with Swan on
2 May 21, 2024. See Ex. F. Furlong agreed to act as an Investment Director for Swan,
3 and provide Swan with a variety of services related to the company's mining
4 operations.

5 96. Each of the Individual Defendants also agreed under his consulting
6 agreement that any inventions or trade secrets he purportedly developed while
7 working for Swan would be Swan's property:

8 *Assignment of Inventions.* Consultant agrees that all right,
9 title, and interest in and to any copyrightable material, notes,
10 records, drawings, designs, inventions, improvements,
11 developments, discoveries, ideas and trade secrets
12 conceived, discovered, authored, invented, developed or
13 reduced to practice by Consultant, solely or in collaboration
14 with others, during the term of this Agreement and arising
15 out of, or in connection with, performing the Services under
16 this Agreement, including Services provided to the
17 Company before the date hereof, and any copyrights,
18 patents, trade secrets, mask work rights or other intellectual
19 property rights relating to the foregoing (collectively,
20 "Inventions"), are the sole property of the Company.⁸

21 97. The Individual Defendants also agreed in their consulting agreements to
22 provide prior written notice if, during the course of their consultancies, they
23 incorporated any inventions, trade secrets, or other proprietary information or
24 intellectual property owned by the consultant into their work for Swan. None ever
25 did so.

26 98. Other Swan employees and consultants working on Swan's mining
27 team—including those that conspired with the Individual Defendants to steal Swan's
28 mining business—signed agreements containing similar provisions.

29 **V. III. Swan Protects the Secrecy of Its Proprietary Information.**

30 99. 50. To protect the competitive advantage Swan's proprietary and trade

31 ⁸ See Exs. A-F (Section 3(A)).

1 secret mining information conferred on its business, Swan's mining employees and
2 consultants (including each of the individual Defendants) agreed to hold all of Swan's
3 confidential and proprietary information and trade secrets in the strictest confidence.

4 100. ~~51.~~ Defendants Furlong, Holmes (on behalf of Defendant Ilios),
5 Monteleone, Naidoo, Romualdez, and Vasconcelos specifically agreed in their
6 consulting agreements that:

7 During and after the term of this Agreement, Consultant will
8 hold in the strictest confidence, and take all reasonable
9 precautions to prevent any unauthorized use of disclosure of
10 Confidential Information, ⁵⁹ and Consultant will not (i) use
11 the Confidential Information for any purposes whatsoever
12 other than as necessary for the performance of the Services
13 on behalf of the Company, or (ii) subject to Consultant's
14 right to engage in Protected Activity (as defined below [*i.e.*,
15 filing a charge with the Government]), disclose the
16 Confidential Information to any third party without the prior
written consent of an authorized representative of the
Company, except that Consultant may disclose Confidential
Information to the extent compelled by applicable law;
provided however, prior to such disclosure, Consultant shall
provide prior written notice to [the] Company and seek a
protective order or such similar confidential protection as
may be available under applicable law. Consultant agrees
that no ownership of Confidential Information is
conveyed to the Consultant. Without limiting the foregoing,

17 ⁵⁹ “Confidential Information” is defined as “any information (including any and all
18 combinations of individual items of information) that relates to the actual or
19 anticipated business and/or products, research or development of the Company, its
20 affiliates or subsidiaries, or to the Company's, its affiliates' or subsidiaries' technical
21 data, trade secrets, or know-how, including, but not limited to, research, product plans,
22 or other information regarding the Company's, its affiliates' or subsidiaries' products
23 or services and markets therefor, customer lists and customers (including, but not
24 limited to, customers of the Company on whom Consultant called or with whom
25 Consultant became acquainted during the term of this Agreement), software,
26 developments, inventions, discoveries, ideas, processes, formulas, technology,
27 designs, drawings, engineering, hardware configuration information, marketing,
finances, and other business information disclosed by the Company, its affiliates or
subsidiaries, either directly or indirectly, in writing, orally or by drawings or
inspection of premises, parts, equipment or other property of [the] Company, its
affiliates or subsidiaries.” “Confidential Information” does not include information
that was publicly available through no wrongful act of the consultant or was
independently developed “with no reference to the Confidential Information.”
Defendant Ilios's consulting agreement also excludes from the definition of
“Confidential Information” “all of Consultant's involvement, relationship, and
dealings with Daniel Tuzzio [], and all of Tuzzio's affiliated entities, whether in
existence prior to or after the Effective Date” of the Agreement. Tuzzio was a
preexisting business associate of Defendant Holmes who Swan and Holmes agreed
would perform services for Swan through Holmes.

1 Consultant shall not use or disclose any Company property,
2 intellectual property rights, trade secrets or other proprietary
3 know-how of the Company to invent, author, make,
4 develop, design, or otherwise enable others to invent,
5 author, make, develop, or design identical or substantially
6 similar designs as those developed under this Agreement for
7 any third party. Consultant agrees that Consultant's
8 obligations under this Section [] shall continue after the
9 termination of this Agreement.⁶¹⁰

10 101. ~~52.~~ Swan ~~also~~ reiterated the necessity of maintaining the confidentiality
11 of Swan's information to its consultants in its "Contractor Playbook," which it
12 provides to all consultants and contractors, including the Individual Defendants. The
13 Contractor Playbook explains that "[i]t is crucial to maintain confidentiality regarding
14 company information and client discussions." The Contractor Playbook directs
15 consultants and contractors to "assume anything Swan-related is confidential –
16 including company, employee/contractor/staff, and client information." (Swan's
17 "Employee Playbook" contains similar guidance.)

18 102. ~~53.~~ To bolster these protections, Swan also supplemented the mining
19 ~~employee~~employee and contractor agreements with a robust infrastructure of
20 agreements, policies, and technological safeguards to maintain the secrecy of its
21 confidential and proprietary information and trade secrets.

22 103. ~~54.~~ Swan's Information Security Policy, for example, "ensures that
23 Swan's information assets are properly identified, recorded, and afforded suitable
24 security measures at all times." The Policy provides that access to Swan documents
25 must be limited to the "most restrictive level possible that still enables the user to
26 perform their job effectively," explains that "[e]mployees and contractors are required
27 to maintain the confidentiality of information to them by Swan, its customers, and
28 suppliers," and cautions that "[u]nauthorized use or distribution of proprietary
information violates Swan's Policy and may be illegal and result in civil and/or

⁶¹⁰ See Exs. A-F ~~to the Declaration of Cory Klippsten in Support of Plaintiff's Ex Parte Application for Temporary Restraining Order Without Notice, Evidence Preservation and Limited Seizure Order, Expedited Discovery Order, Protective Order, and OSC re: Preliminary Injunction ("Klippsten Decl.")~~, filed concurrently.

1 criminal penalties.” It identifies seventeen activities that are “strictly prohibited, with
2 no exceptions,” including:

- 3 • Violations of the rights of any person or company protected by
4 copyright, trade secret, patent, or other intellectual property, or
5 similar laws or regulations. . . .
- 6 • Accessing data, a server, or an account for any purpose other than
7 conducting Swan Bitcoin business, even if you have authorized
8 access; and
- 9 • Providing information about or lists of Swan Bitcoin employees,
10 contractors, partners, or customers to parties outside Swan Bitcoin
11 without authorization.

12 104. 55. Swan’s Security Agents Policy also requires two security
13 applications to be present “on all devices that interact with Swan or company-wide
14 data,” which the Policy advises “is crucial for ensuring the integrity and protection of
15 our Swan assets.” One application “is used in enforcing Swan security policies . . .
16 contributing significantly to the overall security posture of [Swan’s] systems.” The
17 other application “serves as an additional layer of defense, boosting [Swan’s]
18 cybersecurity measures to safeguard against external threats.”

19 105. 56. ~~And to~~To access the system that houses Swan’s confidential and
20 proprietary information and trade secrets, Swan’s mining employees and consultants
21 must enter a password that must meet certain complexity requirements, as well as
22 engage in a ~~multi-factor~~multi-factor authentication process that requires the user to
23 successfully present multiple pieces of evidence to prove their identity.

24 106. Swan also engages a third-party “white hat” hacker service provider to
25 identify potential vulnerabilities in Swan’s cybersecurity infrastructure that outside
26 actors might seek to exploit, so that Swan can secure those vulnerabilities before
27 malicious actors find them. The security protections surrounding BNOC are among
28 the cybersecurity infrastructure that vendor analyzes.

1 107. ~~57.~~ Swan undertook even further protections for BNOC, securely storing
2 the software code on a developer platform called GitHub and restricting access to
3 authorized users with valid credentials. To access BNOC, Swan's Information
4 Security team must approve access for specific Swan personnel. In accordance with
5 Swan's policies, the Information Security team tightly restricts permissions to access
6 BNOC, limited to only those personnel who are directly involved in managing BNOC
7 (such as software developers, security engineers, and platform engineers). Even for
8 personnel with permissions to access GitHub, users must first access Swan's suite of
9 software tools by entering a unique username to which Swan grants rights to access
10 the code. Users must then correctly enter an SSH Key, ~~a~~ a secure, cryptographic key
11 pair used to access remote servers ~~without~~ in a manner that is even more secure than
12 using a password, ~~a~~ before they can access Swan's code. Swan took further steps to
13 protect BNOC through [REDACTED]
14 [REDACTED]

15 108. Like Swan's employment and consultant agreements, the 2040 Energy
16 Shareholders Agreement with Tether contains a broad confidentiality provision,

17 which provides that: [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 **VI. IV. Swan FORMSExpands 2040 Energy, a Financing Arrangement to**
2 **Raise Capital for Bitcoin Mining.**

3 109. 58. To fulfill~~As alleged above, to support~~ Swan's goal of expanding
4 further into the Bitcoin mining industry, Klippsten had contacted Tether about
5 providing capital for a mining project with DAME. Tether had invested in Swan
6 before under the name~~through an entity named~~ "BFX Ventures Limited." The
7 funding arrangement that Tether and Swan ultimately entered into regarding DAME
8 was called 2040 Energy.

9 59. On July 28, 2023, Swan and Tether, through Tether's subsidiary Zettahash
10 Inc., entered into a Shareholders Agreement (along with a third-party individual
11 ~~who originally helped to facilitate the relationship~~) ~~that~~ would govern the
12 arrangement ~~known as 2040 Energy.~~

13 110. Swan's successful operation of the DAME site served as early proof that
14 Swan's site-selection strategies could be used to source and quickly develop
15 successful mining operations elsewhere. Swan used those techniques to identify and
16 evaluate mining sites that showed potential for success. After Swan identified such
17 sites, it frequently prepared confidential memoranda for Tether to solicit funding to
18 develop those sites. Tether opted to fund some sites and declined to fund others, not
19 unlike how a venture capital firm might selectively choose to invest in potential
20 portfolio companies. Tether was under no obligation to provide funding for Swan's
21 proposals, and Swan was under no obligation to provide Tether with those proposals.

22 111. 60. The parties used 2040 Energy ~~was a funding vehicle; it~~as a special
23 purpose investment vehicle—i.e., a "Venture Capital"-style funding arrangement
24 whereby funds would be used for specific investment opportunities. 2040 Energy did
25 not contract with employees or consultants, and Swan was solely responsible for
26 managing the mining operations funded under 2040 Energy. Swan's mining
27 employees and consultants ~~operated~~who entered into contractual agreements with
28 Swan, not 2040 Energymanaged mining operations for 2040 Energy projects and

1 engaged with business vendors and partners (including equipment vendors and
2 datacenter mining hosts) using the Swan brand. Klippsten served as 2040 Energy's
3 CEO (as well as Swan's CEO), overseeing Swan's mining team and operations. Swan
4 consultants and employees managed all aspects of those operations, negotiating
5 agreements with potential mining sites and third-party vendors, and monitoring and
6 directing operations at those sites.

7 112. ~~61.~~ Tether funded 2040 Energy investment opportunities identified by
8 Swan and [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 ~~62.~~ Like Swan's employment and consultant agreements, the 2040 Energy
13 Shareholders Agreement contains a broad confidentiality provision, which provides
14 that: [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 113. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1

2

3 114. Swan's employees and consultants engaged with the mining sites Swan
4 managed under Swan's brand, in their capacities as Swan employees or consultants.
5 Vendors and site operators frequently referred to Swan's consultants and employees
6 as the "Swan team," or similar. Tether did as well, with Devasini repeatedly referring
7 to the mining operations as "Swan's" mining strategy and team.

8 **VII. The Defendants Plot to Steal Swan's Business, Confidential and**
Proprietary Information, and Trade Secrets.

9

10 115. 63. By 2024, 2040 Energy mining was a runaway success by any
11 measure. On information and belief, 2040 Energy's value had soared. By July 2024,
12 Swan's hard work had expanded its mining operation's capacity to just under twelve
13 exahashes, meaning that it was performing nearly twelve quintillion computations per
14 second to ensure secure processing of transactions on the Bitcoin network. By July
15 2024, 2040 Energy—and to put it in the best position to obtain Bitcoin "rewards" as
16 a result. Swan was mining approximately one of every fifty Bitcoins worldwide and
17 Swan and Tether were discussing plans to expand the mining operation's capacity to
18 30 exahashes by the end of 2024. Tether CFO Devasini told Klippsten on multiple
19 occasions that in his opinion Devasini believed Swan was the best mining company
20 and Klippsten was the best CEO in the space.

21 116. 64. By With Swan's mining operation growing, by February 2024, Tether
22 and Swan had agreed in principle to enter into a new funding agreement, known as
23 2140 Energy, which would further invest in the Tasmania site and other Bitcoin
24 mining opportunities. The terms the parties negotiated for 2140 Energy were
25 markedly more favorable to Swan, and granted Swan a greater share of the profits
26 from the mining operations, more quickly, than Swan received under the 2040 Energy
27 arrangement.

28 117. 65. But before the 2140 Energy deal was finalized Although Tether and

1 Swan continued to engage in their joint venture throughout 2024 based on their
2 agreed-upon terms for 2140 Energy, before they committed their agreement to a
3 signed contract, Defendants and their other ~~Swan~~-conspirators⁷¹¹ decided to enrich
4 themselves at Swan's expense. They hatched a plan to steal Swan's mining business
5 from the inside, usurp Swan's role, and cut Swan out from the Tether joint venture.
6 They dubbed ~~it~~their plan "rain and hellfire."

7 118. 66. Upon information and belief, Defendants and their ~~Swan~~
8 ~~conspirators'co-conspirators~~ executed their "rain and hellfire" plan by: (a)
9 downloading all of Swan's confidential and proprietary business information and
10 trade secrets necessary to operate ~~a~~Swan's Bitcoin mining business, including BNOC
11 source code and other material they would need to operate ~~2040 Energy~~a competing
12 mining business; (b) creating a new company, Defendant Proton, which Swan's then-
13 CIO Zagury would operate as CEO with Swan's then-Investment Director Defendant
14 Naidoo as CIO, and which would employ other Defendants and Swan conspirators;
15 and (c) soliciting "legal cover" from Tether to claim that Swan—following their
16 departure—could no longer manage mining for 2040 Energy, push Swan out of its
17 ~~funding agreement~~joint venture with Tether, and insert Defendant Proton as Swan's
18 replacement. Throughout this process, the Individual Defendants were no longer
19 acting for Swan's benefit; they were acting exclusively for Proton as its agents, in
20 order to enrich Proton and the other Defendants at Swan's expense.

21 119. 67. Swan did not uncover the "rain and hellfire" plan until ~~it was~~

22
23 ⁷These¹¹ Defendants' conspirators constituted nearly all of Swan's mining
24 personnel, including Raphael Zagury (Swan's then-Chief Investment Officer), Bill
25 Belitsky (Swan's then- General Counsel), Brett Hiley (Swan's then-Vice President of
26 Institutional Operations & Research), Tyler Effertz (Swan's then-Financial
27 Controller), Kartheek Sola (Swan's then-Technical Researcher), and Aleksander
28 Dozic (Swan's then-Accountant). ~~Swan is not pursuing claims against them~~ Those
conspirators are not defendants in this action because their agreements with Swan
provided for unlike the Individual Defendants' Consulting Agreements—provide
for a different dispute resolution procedures outside this Court procedure. Swan
anticipatesis currently pursuing claims against ~~these~~those individuals pursuant to the
procedures provided byconsistent with their agreements.

1 ~~blindsided by~~after the individual Defendants and ~~Swan~~their conspirators ~~blindsided~~
2 ~~Swan with their~~ coordinated resignations on August ~~8-98-9~~, 2024. ~~In the weeks~~
3 ~~following~~ ~~Since that time~~, Swan ~~has been~~was able to retrieve and review electronic
4 data and forensic activity logs associated with departing employees' and consultants'
5 accounts and reconstruct at least some of their treachery. ~~Those logs~~—though Swan
6 continues to learn new to this day, and much of the story and relevant evidence
7 remains in Defendants' sole possession. The logs that Swan has been able to recover
8 show that Swan's former employees and consultants—including Zagury, Defendant
9 Furlong, Defendant Monteleone, Defendant Naidoo, Hiley, and Dozic—accessed,
10 downloaded, and collectively took large volumes of Swan's confidential and
11 proprietary information and trade secrets in the weeks and days preceding their
12 coordinated resignations, without Swan's knowledge and in violation of their Swan
13 contracts and Swan's policies. They did so at least by exporting that information to
14 personal devices, sharing files with non-Swan email accounts, and absconding with
15 their Swan-issued laptops.

16 120. ~~68.~~ Swan was also able to review electronic communications—including
17 emails and ~~Zoom~~video call logs—from Defendants' and the other ~~Swan~~ conspirators'
18 business accounts, together with detailed notes they kept and saved to the Swan
19 system as they made plans to implement their conspiracy. While Swan's investigation
20 is ongoing, this much is now clear:

21 ~~69. Beginning in June 2024, Swan began the process of raising investment~~
22 ~~into Electric Solidus Inc. through a Series C fundraising round.~~

23 121. ~~70.~~ In late June 2024, and unbeknownst to Swan, Zagury secretly met
24 with ~~Tether's~~ outside counsel for Tether and 2040 Energy at the EAST Miami hotel.
25 ~~Shortly thereafter, Zagury drafted a sham document entitled "Cory Thoughts," which~~
26 ~~included a poison pill recommendation to Swan's CEO to focus solely on Swan's~~
27 ~~mining business and to split off the other aspects of its Bitcoin business, including~~
28 ~~Swan's original financial services. Zagury did not relay any details from that meeting~~

1 to Swan, even though he was a Swan officer and owed fiduciary duties to Swan. Swan
2 only learned of the meeting after Zagury's sudden resignation, as part of Swan's
3 investigation into Zagury's messaging and calendar history.

4 ~~71. On June 28, 2024, Zach Lyons (a founder and principal of Marlin Capital
5 Partners, one of Tether's advisors) told Swan that Tether was offering to lead
6 Swan's Series C fundraising round with a \$25 million investment that would value
7 Swan's business at \$1 billion.~~

8 ~~122. 72. On Meanwhile, on July 23, 2024, Zagury relayed privately to Swan's
9 then-President, Guilherme Gomes, a summary of a discussion Zagury had with Lyons,
10 explaining that Lyons apparently believed Swan's Bitcoin mining business was "in a
11 good position" and was "crushing it," while the remainder of Swan's business
12 (including its financial services operation with approximately 170 of employees) was
13 "a venture capital bet." Zagury (while he was employed as an executive (CIO) with
14 Swan) also told Gomes that Lyons "thinks it is the right [decision] now" to spin
15 Swan's mining business off as an independent entity.~~ Zagury then floated the
16 Defendants' and Swan conspirators' double-cross—he discussed with Gomes the
17 possibility of forming a new company that would replace Swan as the operator of
18 2040 Energy. Zagury would be the new company's CEO, Swan's ~~then-
19 Investment~~then-Investment Director Naidoo would be the COO, and Defendant
20 Holmes would be the Head of Operations and Procurement: "It's easy. I [Zagury]
21 keep playing. I would be CEO. [Defendant] San [Naidoo] could be the COO,
22 [Defendant Michael] Alex [Holmes] the head of operations and procurement." Under
23 this proposed arrangement, after the Defendants usurped Swan's mining operations,
24 Tether would receive 50% of profits from their continued mining operations, the
25 Defendants and their co-conspirators would receive 40%, and Swan's share would be
26 reduced to 10%. Of course, Zagury, the Defendants, and the other conspirators knew
27 that simply swapping out Swan for Proton as the manager and operator of 2040
28 Energy's mining operations would destroy 2040 Energy's mining business, because

1 for Proton to independently develop a mining operation comparable to Swan's would
2 require years of work—if Proton could achieve it at all. And so a central part of
3 Defendants' plot was to steal Swan's confidential information and trade secrets and
4 deploy it for Proton. Defendants ultimately opted to steal Swan's mining business
5 outright, and cut Swan out entirely.

6 123. 73. On July 11, 2024, Zagury and Defendant Naidoo met with Lyons ~~to~~
7 ~~plot an “unwind” of Swan’s involvement in 2040 Energy. Lyons’ motivation is laid~~
8 ~~bare in.~~ According to Zagury’s contemporaneous notes of this meeting. ~~He said that~~
9 ~~Swan had “no value” to Tether and,~~ the group discussed the possibility of certain
10 Swan employees and consultants leaving Swan and going to Tether or another
11 operator to “[k]eep doing what [they’re] doing.” ~~Lyons told Zagury and Defendant~~
12 ~~Naidoo that Klippsten “has to realize they [Tether] can take away [Swan’s mining~~
13 ~~business] tomorrow.”~~

14 ~~74. On July 12, 2024, Zagury sent Klippsten what Zagury claimed were~~
15 ~~“recommendations” based on a document he had initially drafted on June 28, 2024,~~
16 ~~including that Swan focus solely on mining – i.e., the only aspect of Swan’s~~
17 ~~business that would advance the Defendants’ new business interests.~~

18 ~~75. On July 15, 2024, Zagury spoke with Lyons. During the meeting, Zagury~~
19 ~~messaged to Gomes the prospect of suing Swan and forcing a wind down of Swan’s~~
20 ~~business unless Swan agreed with Tether to accept “wind down capital,” force~~
21 ~~Klippsten to resign as CEO of Swan, and turn over Swan’s mining business to~~
22 ~~Tether.~~

23 ~~76. Around that same time, Zagury tried to sow dissent and chaos at Swan,~~
24 ~~undermine Klippsten, and influence Swan’s employees and consultants to leave~~
25 ~~Swan. He repeatedly told Klippsten and other Swan employees and consultants that~~
26 ~~Tether was planning to pull out of the new arrangement, sue Swan based on~~
27 ~~supposed breaches of the 2040 Energy Shareholders Agreement, and renege on an~~
28 ~~offer it had made to invest in Swan in a separate, ongoing round of fundraising. On~~

1 ~~information and belief, Zagury did so because he knew that he, Defendants, and~~
2 ~~other Swan conspirators would replace Swan in operating 2040 Energy if they~~
3 ~~successfully obtained Swan's confidential and proprietary material and the trade~~
4 ~~secrets and enough Swan employees and/or contractors.~~

5 124. 77. Zagury and Tether CFO Devasini met on July 20, 2024. Later that
6 day, Zagury told Klippsten—who was under the misimpression that Zagury was
7 acting consistent with his fiduciary obligations to Swan—that Devasini wanted to
8 appoint Zagury as a board member of 2040 Energy (ostensibly for Swan) and transfer
9 custody of 2040 Energy's Bitcoins to an account controlled by Zagury. Zagury also
10 contacted members of Swan's Board of Directors—who also did not know Zagury
11 was a double-agent—and recommended that they agree to givesell Swan's mining
12 business to Tether at a significantly lower valuation than a valuation Tether had
13 proposed weeks earlier. That valuation was also considerably lower than the
14 valuation that Zagury himself gave Swan's mining business before his meetings with
15 Lyons in June.

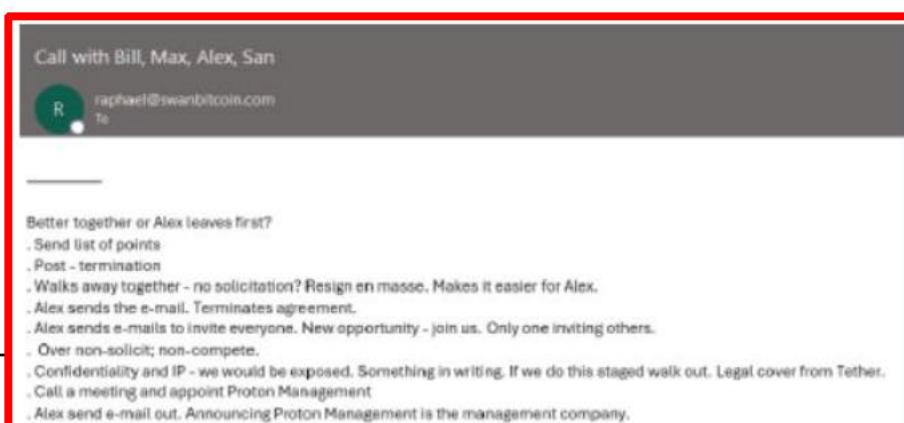
16 125. 78. ~~On information and belief,~~ Defendant Holmes, Defendant Naidoo,
17 Zagury, and Lyons met again on Zoom on July 27, 2024, . On information and belief,
18 the purpose of the meeting was to discuss (i) how Defendant Holmes, Defendant
19 Naidoo, and Zagury (with others inside Swan) would steal Swan's confidential
20 information and trade secrets; so they could use them for Proton; (ii) the simultaneous
21 resignations of virtually all Swan employees and contractors servicing the mining
22 business; , so that Swan would not learn of Defendants' scheme until it was too late;
23 (iii) Defendant Holmes' formation of a new entity (~~Defendant~~ Proton) on whose
24 behalf Defendants would execute their scheme; and (iv) how 2040 Energy would
25 ~~retain that new entity to take over the~~have Proton, armed with Swan's confidential
26 information and trade secrets that Defendants stole, take over 2040 Energy's
27 operations of 2040 Energy from Swan.

28 126. On information and belief, while Defendant Holmes, Defendant Naidoo,

1 Zagury, and Lyons planned the details of their heist, they simultaneously began
2 reaching out to other Swan consultants and employees to recruit them into the scheme.
3 The Individual Defendants and their conspirators appear to have taken steps to
4 conceal these communications from Swan, including by using ephemeral messaging
5 applications or discussing issues over non-written channels of communication. For
6 example, on July 21, 2024, Defendant Naidoo sent Defendant Romualdez a message
7 over Slack, asking him, “Can you send me your signal number please.” Signal is an
8 encrypted messaging application that can automatically delete messages after they are
9 read. On information and belief, Defendants were communicating about their scheme
10 on Signal or by other methods whereby relevant evidence would be destroyed, even
11 though they fully anticipated—and expressly discussed—the likelihood of litigation
12 arising from their scheme. Romualdez responded by providing his Signal contact
13 number. Two days later, Naidoo messaged Romualdez again over Slack, asking, “you
14 doing ok? anything i can help with?” Romualdez replied, “Doing good man - battle
15 ready haha. How about you?” Naidoo responded, “trying to be chilled... trying to
16 just work,” then “big picture still in place.”

17 127. 79. Contemporaneous notes from meetings between Zagury, Defendant
18 Alex Holmes, Defendant Naidoo, then-Swan General Counsel Belitsky, and then-
19 Swan outside counsel Berg (MB Law LLC) detail Defendants’ and their conspirators’
20 resultant “rain and hellfire” scheme on behalf of Proton to “bring the heat” and through

21 a “staged walk out” that would “blow everything up” at Swan:



1 **From:** raphael@swanbitcoin.com
2 **Subject:** Call with Bill, Max, Alex, San
3 **Date: To:** August 6, 2024 at 03:08

R

4
5 [Better together or Alex leaves first?](#)

6 . [Send list of points](#)

7 . [Post - termination](#)

8 . [Walks away together - no solicitation? Resign en masse. Makes it easier for Alex.](#)

9 . [Alex sends the e-mail. Terminates agreement.](#)

10 . [Alex sends e-mails to invite everyone. New opportunity - join us. Only one inviting others.](#)

11 . [Over non-solicit; non-compete.](#)

12 . [Confidentiality and IP - we would be exposed. Something in writing. If we do this staged walk out. Legal cover from Tether.](#)

13 . [Call a meeting and appoint Proton Management](#)

14 . [Alex send e-mail out. Announcing Proton Management is the management company.](#)

15 . [Then Alex sends out e-mail to team. Join Proton.](#)

16 . [No leverage to include releases.](#)

17 [Tether needs to send default notice.](#)

18 [Team is getting to a point where is getting untenable. Bill is being put at risk. Dangerous to team to stay around. Team resignation and move with Tether needs to be on tandem.](#)

19 [Fortress is looming.](#)

20 [Last week you said you'd unleash hell on this guy.](#)

21 . [Alex leaves](#)

22 . [Breach](#)

23 . [Proton is assigned manager of 2040 assets](#)

24 . [All communications go to new management company](#)

25 . [ROFR gone if Alex resigns](#)

26 . [Written communications. Alex terminated his agreement. We don't need a board resolution.](#)

27 . [Bring the heat](#)

28 . [Giancarlo side convs. ?](#)

29 [Bill took himself out of Fortress situation. Cory interrogating him now. Trying to ruin Rapha's reputation. Sling a lot of shit. 10% will stick.](#)

30 [They cannot go and say we didn't do it by the book.](#)

31 [Rain and hell fire needs to start. Needs to be an exit, not a nice transaction.](#)

32 [\[REDACTED\] is moot when Alex leaves. Already moot now. Double covered the second Alex leaves.](#)

33 [Bill interrogated if anyone asked him to join mining.](#)

34 [-----](#)

35 [>10% deposit to Taras](#)

36 [Status of Proton - update - formed, formalizing docs.](#)

1 **VIII. VI. The Defendants Execute Their Scheme.**

2 128. 80. As July turned into August, the Defendants and the Swan
3 conspirators executed on their “rain and hellfire” plan. They kept all of this secret
4 from Swan, leaving Swan to piece things together after Defendants were already out
5 the door.

6 129. 81. On July 25, 2024, Defendant Monteleone downloaded a component
7 of Swan’s BNOC source code (“bnoc-cron”) within GitHub.

8 130. 82. On July 29, 2024, Defendant Proton, through an agent, filed a
9 document in the British Virgin Islands seeking to reserve the name “Proton
10 Management” for a new corporation. On information and belief, Defendant Holmes
11 caused this document to be filed from California.

12 131. On July 30, 2024, the website domain “Elektron-Energy.com” was
13 registered. On information and belief, one or more of the Individual Defendants
14 caused that domain name to be registered.

15 132. 83. OnAlso on July 30, 2024, Defendant Monteleone added a “personal
16 access token” labeled “Elektron” to his GitHub account, as reflected in emails sent to
17 Monteleone’s Swan email account. That personal access token provided access to
18 Swan’s GitHub source code files to an entity or individual with access to that
19 “Elektron” token. That same day, Defendant Monteleone downloaded a copy of
20 Swan’s BNOC core mining dashboard source code and, prior to August 8, 2024,
21 exfiltrated this proprietary source code into a source code repository outside of
22 Swan’s systems, in violation of Swan policy.

23 133. 84. Also on July 30, 2024, Swan’s then-Vice President of Institutional
24 Operations & Research Hiley downloaded approximately 319 documents from
25 Swan’s Google Drive. This included, for example, highly confidential monthly
26 mining performance data, data related to mining inventory, operations and machine
27 performance and configuration by site, meeting notes, and Swan policies and
28 procedures. Of particular note, Hiley downloaded a log of weekly reports to Klippsten

1 that provide ~~in-depth~~ analysis and details about all of Swan's mining sites
2 and operations. The specific files that Hiley downloaded on July 30, 2024 included
3 but were not limited to (i) hundreds of documents reflecting operational processes and
4 comprehensive day-to-day details across Swan's mining sites; (ii) documents
5 reflecting Swan internal mining testing results (e.g., "██████████"); and (iii)
6 Swan internal mining policies and procedures (e.g., "██████████
7 ██████████" "██████████
8 ██████████").

9 134. 85. On August 2, 2024, Defendant Proton, through an agent, filed a
10 Certification of Incorporation in the British Virgin Islands. On information and belief,
11 Defendant Holmes caused this document to be filed ~~from California. On information~~
12 and belief. Proton's senior management in the lead-up to and at the time of the
13 conspirators' coordinated theft of Swan's information consisted almost if not entirely
14 of some combination of Defendant Holmes, Defendant Naidoo, Zagury, and
15 potentially other of their conspirators.

16 135. 86. During the first week of August, Zagury, on behalf of Proton,
17 exported data off Swan’s “Notion” platform, an internal tool for recording business
18 and operational data. That data included confidential business information
19 concerning ongoing deals with a Swan partner.

20 136. ~~87.~~ That same week, Defendant Naidoo and Defendant Furlong, ~~too also~~
21 on behalf of Proton, downloaded numerous documents from Swan's Google Drive.
22 Defendant Naidoo downloaded, ~~for example~~, 47 documents, including highly
23 confidential monthly mining performance data, proprietary financial records,
24 contracts, and earnings reports. One of the documents that Defendant Naidoo
25 downloaded is a "[REDACTED]" spreadsheet that houses all Swan's proprietary
26 information related to its hash-rate optimization techniques. 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 137. ~~88.~~ Also that same week, Defendant Furlong, on behalf of Proton,
2 downloaded roughly 100 documents, including modeling files containing proprietary
3 formulas and logic that support Swan's BNOC, which on information and belief, he
4 ~~would not have downloaded~~had no legitimate reason to download in connection with
5 his ~~day to day~~day-to-day role at Swan.

6 138. ~~89.~~ On August 4, 2024, Zagury, on behalf of Proton, cloned (i.e.,
7 downloaded) all of Swan's BNOC source code from GitHub. When Zagury did so,
8 he utilized an SSH key¹² with a different hash, indicating that he was downloading
9 the data to a device other than his Swan laptop.

10 139. ~~90.~~ And between August 6-8, 2024, Zagury, on behalf of Proton,
11 downloaded approximately 1,750 files from Swan's computer systems to an external
12 hard drive named "G-Tech External HDD." These files included, for example,
13 Swan's proprietary financial records, strategic development records, contracts, term
14 sheets, Bitcoin mining operating models, Bitcoin wallet information regarding Swan
15 and its partners within 2040 Energy, Slack communications, email correspondence
16 and attachments, and Bitcoin code. Zagury, on behalf of Proton, also downloaded the
17 "████████" spreadsheet that ~~houses all~~contains information related to many
18 of Swan's proprietary hash-rate optimization techniques ~~information.~~ This mass
19 download also included virtually all of the email messages stored in Zagury's Swan
20 email account, which included extensive correspondence between Swan's mining
21 team, on the one hand, and third-party vendors and mining site operators, on the other
22 hand, much of which would have included extensive confidential details regarding
23 Swan's management of site operations. Zagury, on behalf of Proton, downloaded an
24 additional 15 files on August 7 and 8 from Swan's Google Drive.

25 140. ~~91.~~ August 8, 2024 was the culmination of Defendants' and their Swan

26
27 ¹² An SSH key is a secure, cryptographic key pair used for authentication in Secure
28 Shell (SSH) protocol connections. SSH keys are an alternative to password-based
logins, providing stronger security by utilizing public-key cryptography.

1 conspirators' efforts up to that point.

2 141. 92. That morning, Defendant Holmes, Defendant Monteleone,
3 Defendant Naidoo, then Swan Junior Investment Analyst Defendant Romualdez,
4 Zagury, Belitsky, Berg, then Swan Staff Accountant Dozie, and Lyons met on Zoom
5 for several hoursLyons, and Zagury spent the morning of August 8, 2024, on
6 videoconference calls amongst themselves, other Individual Defendants, and their co-
7 conspirators. On information and belief, they coordinated the culmination of their
8 plan to continue pilferingfinal steps of stealing Swan's trade secrets and confidential
9 information; resignresigning from Swan *en masse*; and pivot toinserting Defendant
10 Proton to complete the takeover oftake over Swan's mining business and its place
11 withwithin 2040 Energy.

12 142. Specifically, the conspirators conferred over the course of two video
13 calls, the first of which began at approximately 4:10 a.m.¹³

14 First Call – August 8, 2024, 4:10 a.m. – 7:55 a.m.

- 15 ■ 4:10 a.m. – Defendant Naidoo and Zagury begin call.
- 16 ■ 4:45 a.m. – Marlin Capital's Zachary Lyons joins.
- 17 ■ 5:10 a.m. – Lyons leaves.
- 18 ■ 5:45 a.m. – Swan's then-outside counsel Max Berg joins.
- 19 ■ 5:56 a.m. – Swan's then-General Counsel Belitsky joins.
- 20 ■ 6:30 a.m. – Defendant Alex Holmes joins.
- 21 ■ 7:02 a.m. – Berg leaves.
- 22 ■ 7:17 a.m. – Belitsky leaves.
- 23 ■ 7:23 a.m. – Defendant Furlong joins.
- 24 ■ 7:44 a.m. – Defendant Furlong leaves.
- 25 ■ 7:55 a.m. – Defendant Holmes, Defendant Naidoo, and Zagury end call.

26 143. Defendant Holmes, Defendant Naidoo, Lyons, and Zagury reconvened

27 ¹³ Throughout, all times refer to Pacific Standard Time and are approximate, unless
28 otherwise noted.

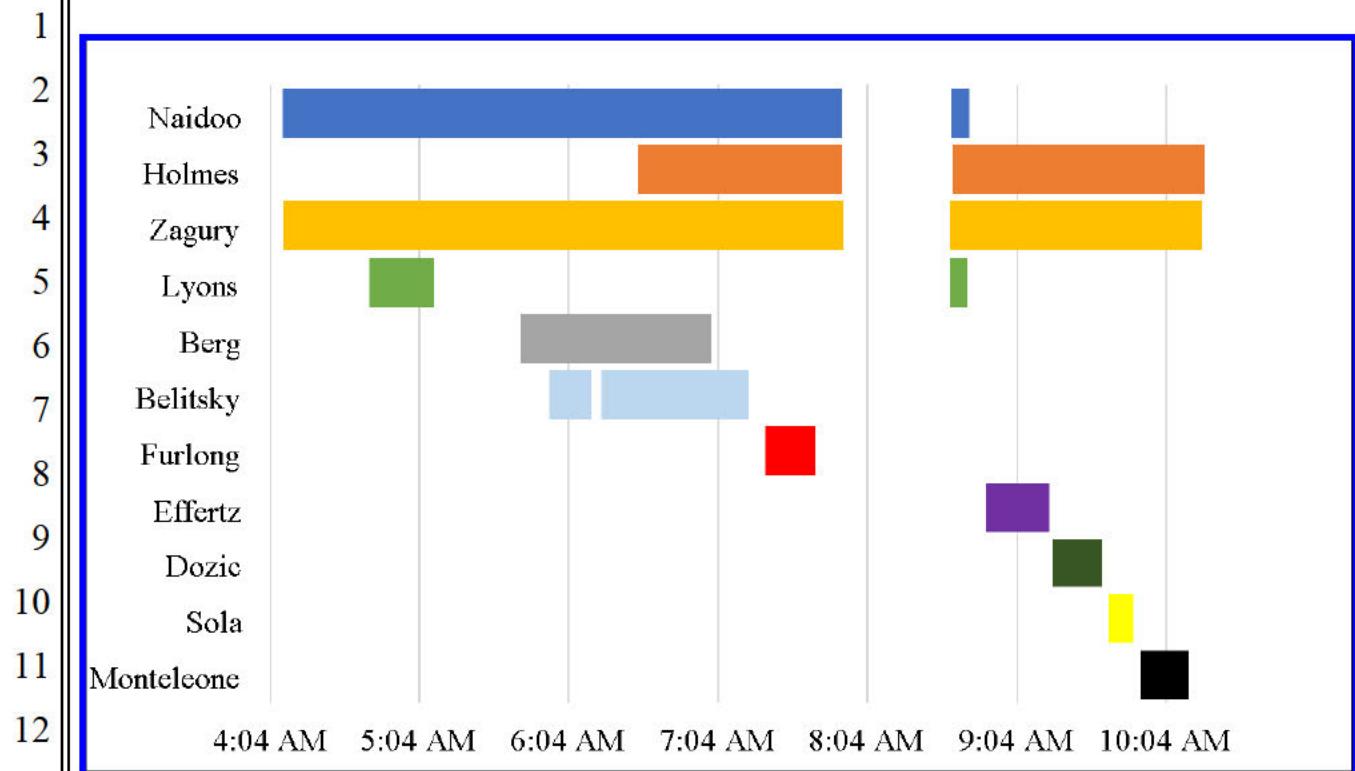
1 at approximately 8:40 a.m. One-by-one, and in close succession, almost all of the
2 remaining conspirators joined and left that call.

3 *Second Call – August 8, 2024, 8:40 a.m. – 10:20 a.m.*

4 ■ 8:40 a.m. – Defendants Holmes and Naidoo, Lyons, and Zagury begin call.
5 ■ 8:46 a.m. – Defendant Naidoo and Lyons leave call.
6 ■ 8:52 a.m. – Swan Financial Controller Effertz joins.
7 ■ 9:18 a.m. – Effertz leaves.
8 ■ 9:19 a.m. – Swan Staff Accountant Dozic joins.
9 ■ 9:39 a.m. – Dozic leaves.
10 ■ 9:41 a.m. – Swan Technical Researcher Kartheek Sola joins.
11 ■ 9:52 a.m. – Sola leaves.
12 ■ 9:54 a.m. – Defendant Monteleone joins.¹⁴
13 ■ 10:14 a.m. – Defendant Monteleone leaves.
14 ■ 10:20 a.m. – Defendant Holmes and Zagury end call.

15 144. On information and belief, Defendants ~~Furlong and~~ Vasconcelos and
16 Romualdez were part of this group and were actively involved in Defendants'
17 schemes and misappropriation. All told, these calls lasted over five hours, as
18 illustrated below:

19
20
21
22
23
24
25
26 ¹⁴ Swan's call logs identify this participant as "Rafael." On information and belief,
27 "Rafael" refers to Defendant Monteleone. Similarly, the logs discussed above
28 identify a "Tom" and "Karl"; Swan believes those names refer to Defendant Furlong
and Kartheek Sola, respectively.



145. 93. Sometime that day, Dozic downloaded Approximately twenty
15 minutes after speaking with Defendant Naidoo and Zagury, Dozic, on behalf of
16 Proton, began downloading approximately 616 files to an external hard drive named
17 “Device\HarddiskVolume 7\2.” These files included, for example, economic
18 modeling related to Swan’s mining and general business operations, Swan budgets,
19 general ledgers, customer invoices related to Bitcoin mining, mining inventories,
20 contracts, Bitcoin wallet information regarding Swan and its partners within 2040
21 Energy, energy reports, banking information, and ~~earnings~~ Earnings and BTC
22 Distribution reports broken down by individual mining sites.

23 146. 94. Later that day, Dozic, on behalf of Proton, also downloaded a
24 document off Swan’s Notion’s platform entitled “Invoice and Payments Tracker,”
25 which includes Swan’s confidential and proprietary customer and pricing
26 information.

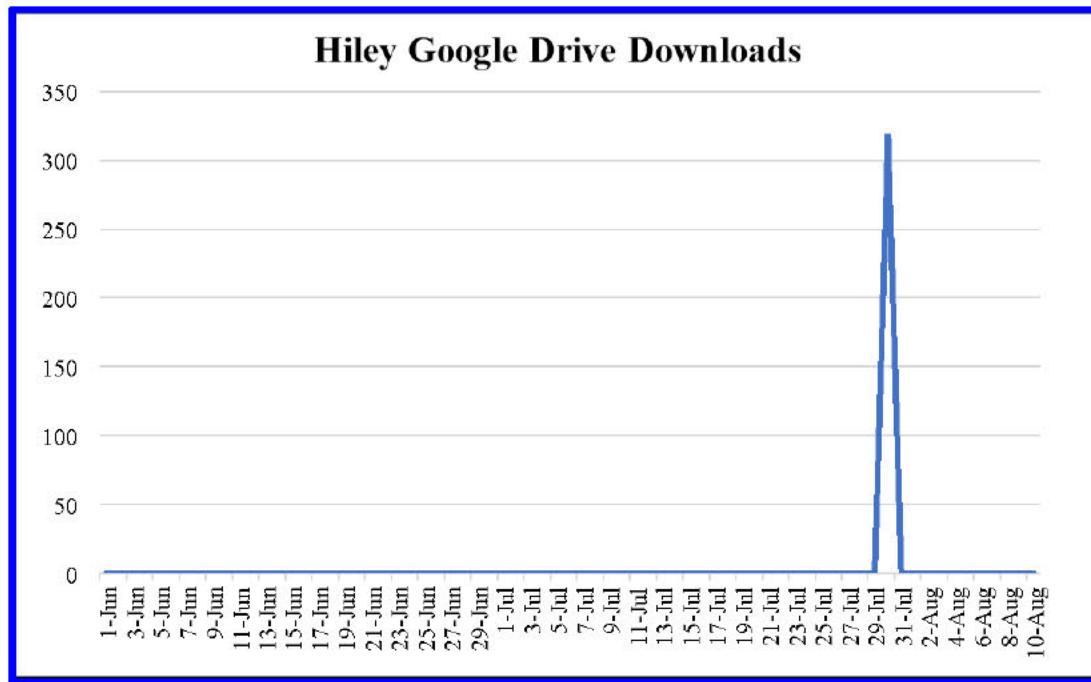
27 147. 95. That same day, Defendant Monteleone, on behalf of Proton,

1 duplicated Swan’s BNOC source code and exfiltrated it to the GitHub organization,
2 “elektron-tech,” and a repository named “nxt” that is unassociated with Swan.
3 Evidencing this theft, Defendant Monteleone received an alert from his GitHub
4 account to his Swan work email address that day, informing him of an error in
5 building a version of BNOC software that appeared identical to Swan’s, indicating
6 that Swan’s BNOC source code had been cloned and stolen. ~~Defendant Monteleone~~
7 ~~duplicated Swan’s code and exfiltrated it to the GitHub organization, “elektron tech,”~~
8 ~~and repository named “nxt” unassociated with Swan.~~ When he realized that alerts of
9 his suspicious GitHub activity were being sent to a Swan email address, Defendant
10 Monteleone immediately took action to remove his Swan work email address from
11 his GitHub account to evade further detection. Four minutes after the first alert,
12 GitHub sent another alert to Defendant Monteleone’s Swan work email address
13 confirming he had removed his Swan work email address from his GitHub account.

148. All told, the Individual Defendants and their conspirators, all on behalf
15 of Proton, collectively downloaded thousands of files in their last weeks with Swan—
16 right up to hours before they left—without any legitimate business reasons to do so.
17 Indeed, these downloads represented massive spikes compared to the conspirators’
18 previous download activity.

19
20
21
22
23
24
25
26
27
28

1 149. For example, all of Hiley's downloads from Swan's Google Drive
2 between June 1 through his resignation on August 8 occurred on July 30. On that day,

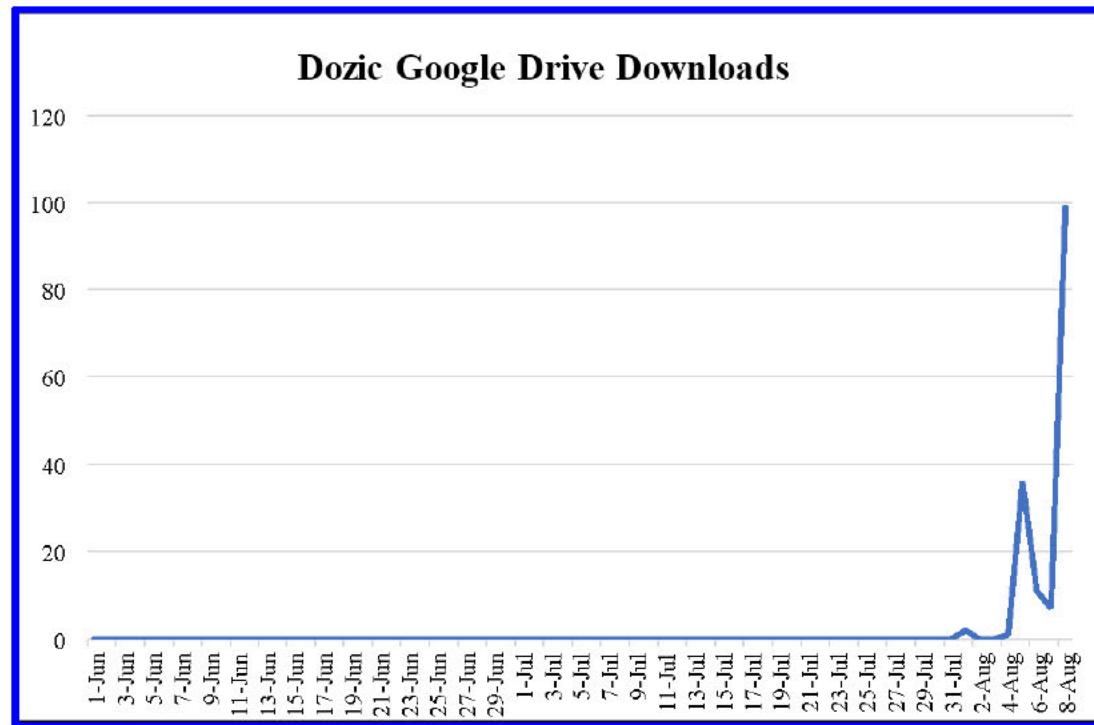


he downloaded 319 files from Swan's Google Drive:

1 150. Similarly, all of Dozic's downloads from Swan's Google Drive from
2 June 1 through his resignation occurred in August, as shown below:

3
4 151. The documents Defendants stole include:

5 ● [REDACTED]
6 ● [REDACTED]
7 ● [REDACTED]
8 ● [REDACTED]
9 ● [REDACTED]
10 ● [REDACTED]
11 ● [REDACTED]
12 ● [REDACTED]
13 ● [REDACTED]
14



25 ● [REDACTED]
26 ● [REDACTED]
27 ● [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Exhibit G includes a listing of the files that Swan currently has reason to believe
23 Defendants and their conspirators stole prior to their resignations.¹⁵

24

25 ¹⁵ This list reflects files that the conspirators either downloaded from Swan's Google
26 Drive systems or exported to non-Swan devices or accounts in the lead-up to their
27 resignations. In many cases, the conspirators downloaded multiple copies of the same
28 file. Several files—such as the "████████" file referenced above—were
downloaded by multiple conspirators. Exhibit G removes these two categories of
duplicate files. This exhibit also does not include the entire set of over 1,750 files that
Zagury exported to an external hard drive between August 6 and August 8, as that set

1 152. The conspirators stole Swan's confidential and proprietary information
2 and trade secrets on behalf of Proton, and solely for the purpose of using Swan's
3 information for Defendant Proton's benefit—which they immediately began doing
4 after their resignations, as described below.

5 153. 96. After the conspirators secured With Swan's confidential and
6 proprietary information and trade secrets, Defendant in hand, Defendants started
7 resigning. At 3:32 p.m. on August 8, Alex Holmes (for his personal company
8 Defendant Ilios) sent a notice of resignation from to Swan and, Meanwhile, Zagury
9 began drafting his own notice of resignation.

10 154. 97. Defendant Holmes also tried to manufacture a cover-up to their
11 preexisting scheme he of Defendants' long-planned scheme, as he, Defendant
12 Naidoo, and other Swan conspirators had discussed during their planning calls. Alex
13 Holmes wrote Zagury and Defendant Naidoo: “I want to let you both know that I
14 have made the decision to terminate my contractor agreement with Swan, effective as
15 of an hour ago. I am in the process of making arrangements to manage the fleet that
16 we have built together and want you both with me.” Holmes was trying to create a
17 falsified paper trail that he was notifying Zagury and Naidoo of his resignation for the
18 first time in this letter, when in fact they had all been conspiring on this subject for
19 weeks. Zagury sent his notice of resignation from Swan approximately eight minutes
20 after Defendant Holmes sent his message, and Defendant Naidoo sent a notice of
21 resignation approximately one minute later after that.

22 155. 98. Shortly thereafter, Defendant Holmes sent a message to Defendant
23 Furlong, Defendant Monteleone, Defendant Romualdez, Defendant Vasconcelos,
24 Belitsky, Berg, Dozic, Effertz, Hiley, and Sola stating that “Arrangements are under
25 way” for a new entity (the already existing and long-discussed Defendant Proton) and
26 “I don’t expect us to skip a beat.” The message further stated that Zagury and

27 includes apparently all of Zagury's Swan email account. Exhibit G thus understates
28 the scope of Defendants' theft of Swan information.

1 Defendant Naidoo would be joining Defendant Holmes at the new entity.

2 156. ~~99.~~ With that assurance, the Swan conspirators sent quick-succession
3 notices of resignation—something they surely had planned and discussed during their
4 hours-long marathon video call earlier that morning:

- 5 • Enrique Romualdez: Aug. 8, 2024, 5:25 p.m. “*Immediate*
6 *Resignation Notice: Enrique Romualdez*”
- 7 • Aleksander Dozic: Aug. 8, 2024, ~~6:31 p.m.~~5:31 p.m., “*Resignation*
8 *Notice*”
- 9 • Rafael Monteleone: Aug. 8, 2024, ~~6:43 p.m.~~5:43 p.m.,
10 “*Resignation Notice*”
- 11 • Katheek Sola: Aug. 8, 2024, ~~6:53 p.m.~~5:53 p.m., “*Official*
12 *resignation*”
- 13 • Brett Hiley: Aug. 8, 2024, ~~7:26 p.m.~~6:26 p.m., “*Letter of*
14 *Resignation – Brett Hiley*”
- 15 • Lucas Vasconcelos: Aug. 8, 2024, ~~7:35 p.m.~~6:35 p.m.,
16 “*Resignation Notice: Lucas Vasconcelos*”
- 17 • Max Berg: Aug. 8, 2024, ~~7:51 p.m.~~6:51 p.m., “*MB Law LLC –*
18 *Termination of Representation*”
- 19 • Tom Furlong: Aug. 8, 2024, ~~8:18 p.m.~~7:18 p.m., “*Resignation*
20 *notice*”
- 21 • ~~Enrique Romualdez: Aug. 8, 2024, 8:25 p.m., “*Immediate Resignation*~~
22 *Notice: Enrique Romualdez*”
- 23 • Tyler Effertz: Aug. 8, 2024, ~~9:25 p.m.~~8:25 p.m., “*Notice of*
24 *Resignation – Tyler Effertz – 8/9/24*”
- 25 • Bill Belitsky: Aug. 9, 2024, ~~9:14 a.m.~~8:14 a.m., “*Resignation*
26 *Notice*”

27 157. On information and belief, Defendants Furlong, Romualdez,
28 Monteleone, and Vasconcelos, as well as Effertz, and other Swan conspirators, ~~began~~

1 ~~working~~ immediately accepted formal positions to work with Defendants Holmes and
2 Naidoo for Defendant Proton—~~although all of them had been working on Proton's~~
3 ~~behalf throughout their scheme. All told, based on Swan's current understanding and~~
4 ~~belief, each of the 13 consultants and employees who engaged in the coordinated~~
5 ~~resignations now works for Defendant Proton.~~

6 158. 100. Early on August 9, 2024, within three hours of the final conspirator
7 sending his resignation email to Swan, Tether's counsel sent an unprompted (and
8 ~~self-serving~~self-serving) email to Swan saying that “I understand that most or all of
9 the Swan Mining employees have resigned this morning. I have spoken with Tether
10 and confirmed that these former employees were not encouraged to resign and have
11 no existing arrangements with Tether.” Of course, this was false, given that
12 contemporaneous call notes and other records show that the Defendants had been
13 coordinating with Tether all along.

14 159. 101. Also on August 9, 2024, as the Defendants and Swan conspirators
15 had planned ~~and, on information and belief orchestrated~~, Tether's counsel served upon
16 Swan's counsel a carefully timed and detailed “[REDACTED],” ~~dated~~
17 ~~that same day,~~ baselessly claiming [REDACTED]
18 [REDACTED] This was, evidently, the first step of the planned “legal cover”
19 [REDACTED]
20 [REDACTED] that Defendants knew they would need—and receive—from Tether
21 for their “exposure” on “Confidentiality and IP.” Tether's “[REDACTED]
22 [REDACTED]” was a sham. For example, [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] Of
27 course, no such assurances would be necessary had Defendants and ~~the Swan~~their
28 conspirators not been conspiring for weeks to coordinate ~~the~~their theft and mass

1 | resignation less than a day prior.

2 160. ~~102.~~ On August 12, 2024, Klippsten was forced to resign as CEO of 2040
3 Energy because it was clear Swan (his company) was being pushed out of that funding
4 arrangement; ~~and that~~ [REDACTED]
5 [REDACTED]; and based on his conclusion that Devasini
6 ~~and van der Velde~~, [REDACTED], had played a role in
7 stealing Swan's mining team and business and were not acting in good faith. [REDACTED]

¹⁶¹ ~~103~~ Also on August 12, 2024, Tether's counsel sent Swan

162. ~~104.~~ In that August 12, 2024 notice, Tether's counsel wrote further:

19 [REDACTED] " With that, as Swan would later learn,
20 Defendants' and the Swan conspirators' coup was complete—Defendant Proton,
21 created by Defendant Holmes, and led by CEO Zagury and CIO Defendant Naidoo
22 had created an illegal facsimile of Swan's Bitcoin mining business using the reams of
23 information and relationships they stole from Swan, rather than create their own
24 legitimate business.

25 163 ~~105~~. As a further result of Defendants' "rain and hellfire" plan, Swan's
26 plans for a Series C fundraising round and an IPO were scuttled. Because Swan was
27 ~~unable to count on the 2040 Energy continued funding relationship for Bitcoin~~ kicked
28 out and shut off from its mining operation, it was forced to withdraw its Series C

1 round and go back to the market several weeks later seeking investment at a much
2 lower valuation.

3 ~~106. Swan is still in the market seeking funding for its Series C fundraising~~
4 ~~round.~~

5 **IX. VII. Swan Investigates, Tries to Mitigate Disruption, and Reserves**
6 **Rights.**

7 164. ~~107.~~ Swan acted quickly to assert its rights and protect the ability of 2040
8 Energy to conduct its mining business, mindful that Klippsten was still formally a
9 director of 2040 Energy and that Swan may still technically own a stake in the venture.

10 165. ~~108.~~ On August 13, 2024, Swan, through counsel, responded to
11 the Tether's manufactured August 9 [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 166. ~~109.~~ Also on August 13, 2024, Swan demanded that Defendants Holmes
20 and Romualdez, along with Swan conspirators Zagury, Belitsky, Dozic, Effertz,
21 Hiley, and Sola, return their Company-issued laptops and equipment to Swan~~as~~. To
22 facilitate their consultancies and employment with Swan, Swan purchased and issued
23 company laptops for each of the Individual Defendants and their conspirators to use
24 for the purposes of performing services for Swan. Each was required by their
25 individual employment or consulting agreements to return those laptops upon

26
27 ~~* Swan does not currently bring this lawsuit against Tether or its subsidiary~~
28 ~~Zettahash while Swan continues to investigate their precise involvement, but Swan~~
~~reserves its rights to do so without waiver.~~

1 termination of their work for Swan. Defendant Holmes' agreement (through
2 Defendant Ilios), for instance, provided that:

3 Upon the termination of this Agreement, or upon
4 Company's earlier request, Consultant will immediately
5 deliver to the Company, and will not keep in Consultant's
6 possession, recreate, or deliver to anyone else, any and all
7 Company property, including, but not limited to,
8 Confidential Information, tangible embodiments of the
9 Inventions, all devices and equipment belonging to the
10 Company, all electronically[] stored information and
11 passwords to access such property, [certain records,] and
12 any reproductions of any of the foregoing items that
13 Consultant may have in Consultant's possession or
14 control.⁹¹⁶

15 To date, not a single Individual Defendant has returned his Swan laptop.

16 ~~None were returned.~~¹⁰

17 ~~110. On August 14, 2024, Tether's counsel responded to Swan's letter,~~
18 ~~requesting that Swan provide information concerning [REDACTED]~~
19 ~~[REDACTED]~~
20 ~~[REDACTED]~~
21 ~~[REDACTED]~~

22 ~~111. Although Klippsten had been forced to resign from his position as CEO
23 of 2040 Energy, he believed he had fiduciary duties to the entity from his position as
24 a director. While Swan was sorting out whether the Shareholders Agreement was
25 still in effect, Swan knew it also technically had a number of obligations to 2040
Energy under the Shareholders Agreement. And Swan understood Defendants were
still collecting ammunition for Tether to use to sue Swan under the Shareholders
Agreement to deflect from their wrongdoing. Swan also was exploring its legal
options.~~

26 ⁹¹⁶ The other individual Defendants' agreements are identical, see ~~Klippsten Decl.~~
27 Exs. A-F, with one exception—Defendant Ilios's Agreement excludes from the
definition of "Confidential Information" "all of Consultant's involvement,
relationship, and dealings with Daniel Tuzzio [], and all of Tuzzio's affiliated entities,
whether in existence prior to or after the Effective Date" of the Agreement. *Id.* Ex. B.
Tuzzio was a preexisting business associate of Defendant Holmes whom Swan and
Holmes agreed would perform services for Swan through Holmes.

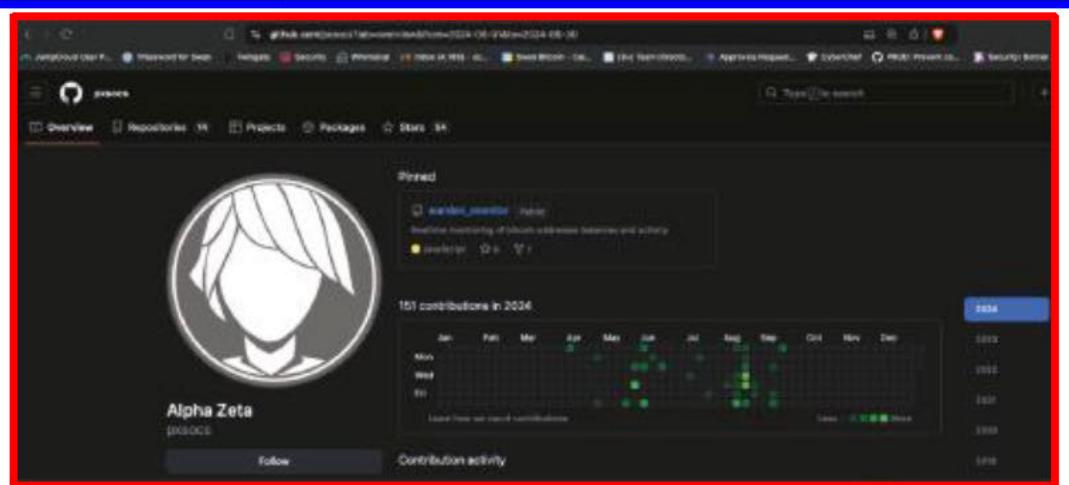
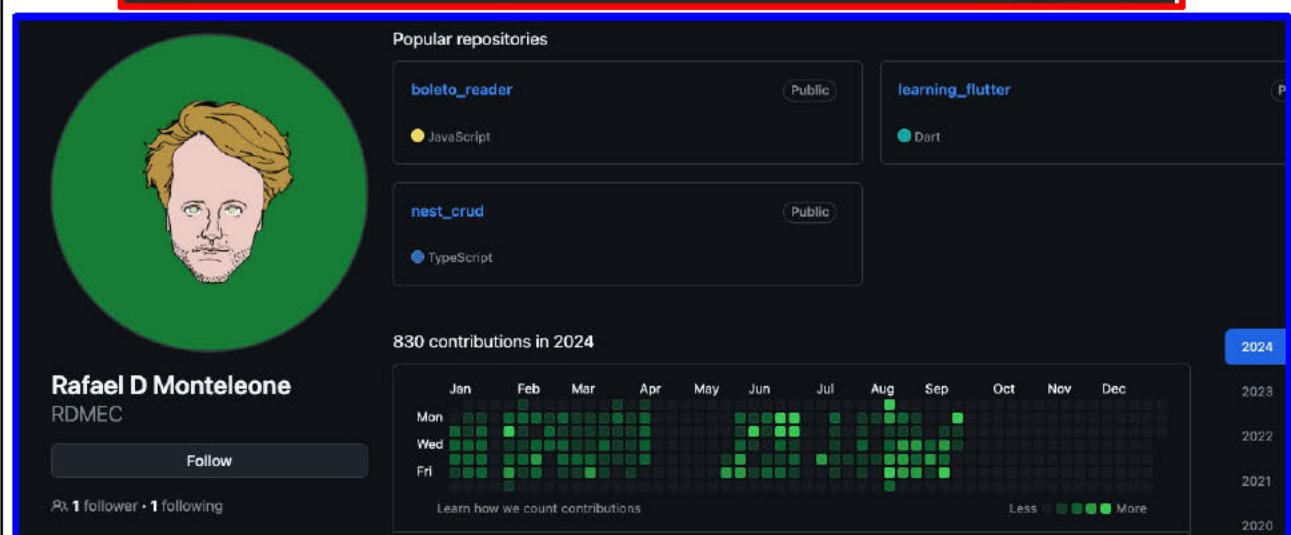
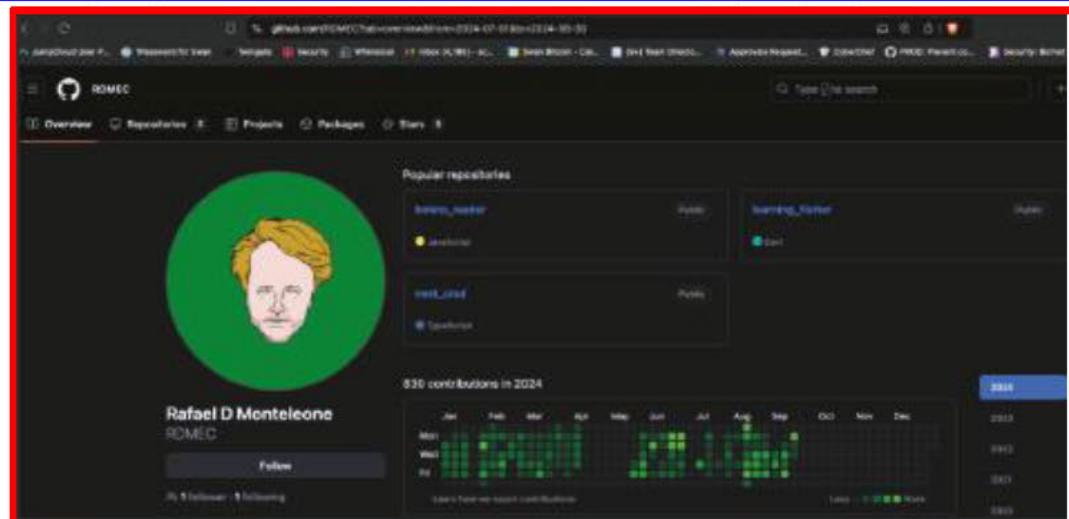
28 ¹⁰ ~~Defendant Romualdez responded with his address, but then fell silent (and his
laptop was not returned with subsequent requests).~~

1 ~~112. Accordingly, on August 19, 2024, Swan (through counsel) described to~~
2 ~~Tether's counsel~~ [REDACTED]
3 [REDACTED] ~~while retaining all rights to pursue any claims~~
4 ~~Swan may have at law or in equity." Swan reiterated that,~~ [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] ~~It reserved all rights and stated~~
9 ~~clearly that Defendant "Proton Management is using intellectual property Proton's~~
10 ~~employees stole from Swan before resigning their positions with Swan," and~~
11 ~~requested "that the board of 2040 immediately notify [Defendant] Proton~~
12 ~~Management to seek proper licenses to any intellectual property that may belong to~~
13 ~~Swan." Neither 2040 Energy nor Defendant Proton ever did so.~~

14 167. ~~113.~~ On August 22, 2024, and again on August 27, 2024, Swan repeated
15 its request that Defendants Holmes and Romualdez, along with Swan conspirators
16 Zagury, Belitsky, Dozic, Effertz, Hiley, and Sola, return their ~~Company issued~~Swan-
17 issued laptops and equipment to Swan as required by their individual employment or
18 consulting agreements. It made the same request of Defendants Furlong, Monteleone,
19 Naidoo, and Vasconcelos. Again, none did so.

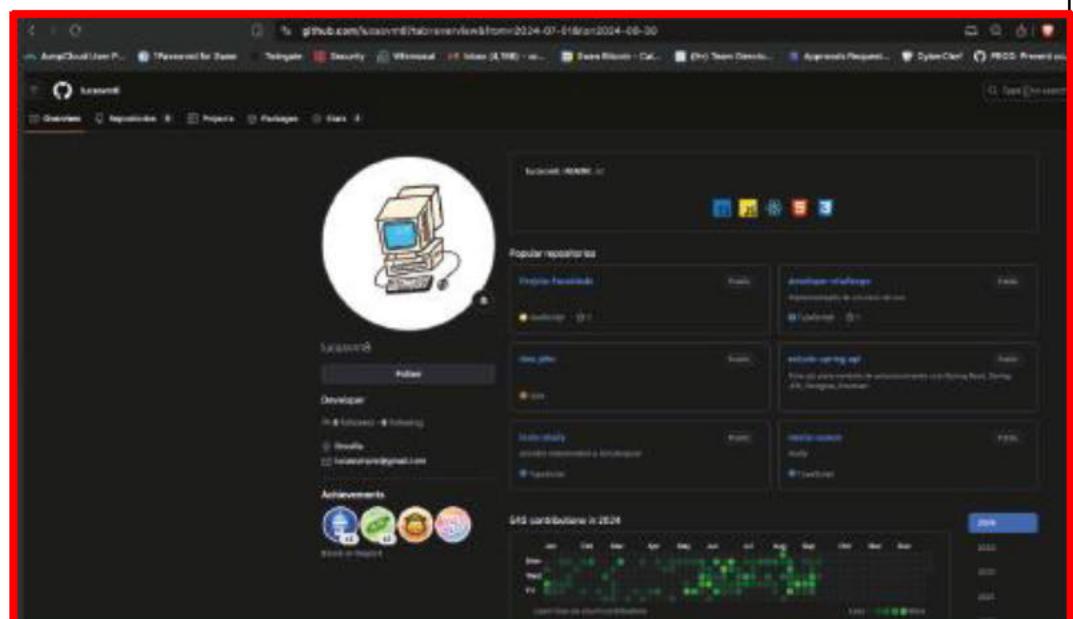
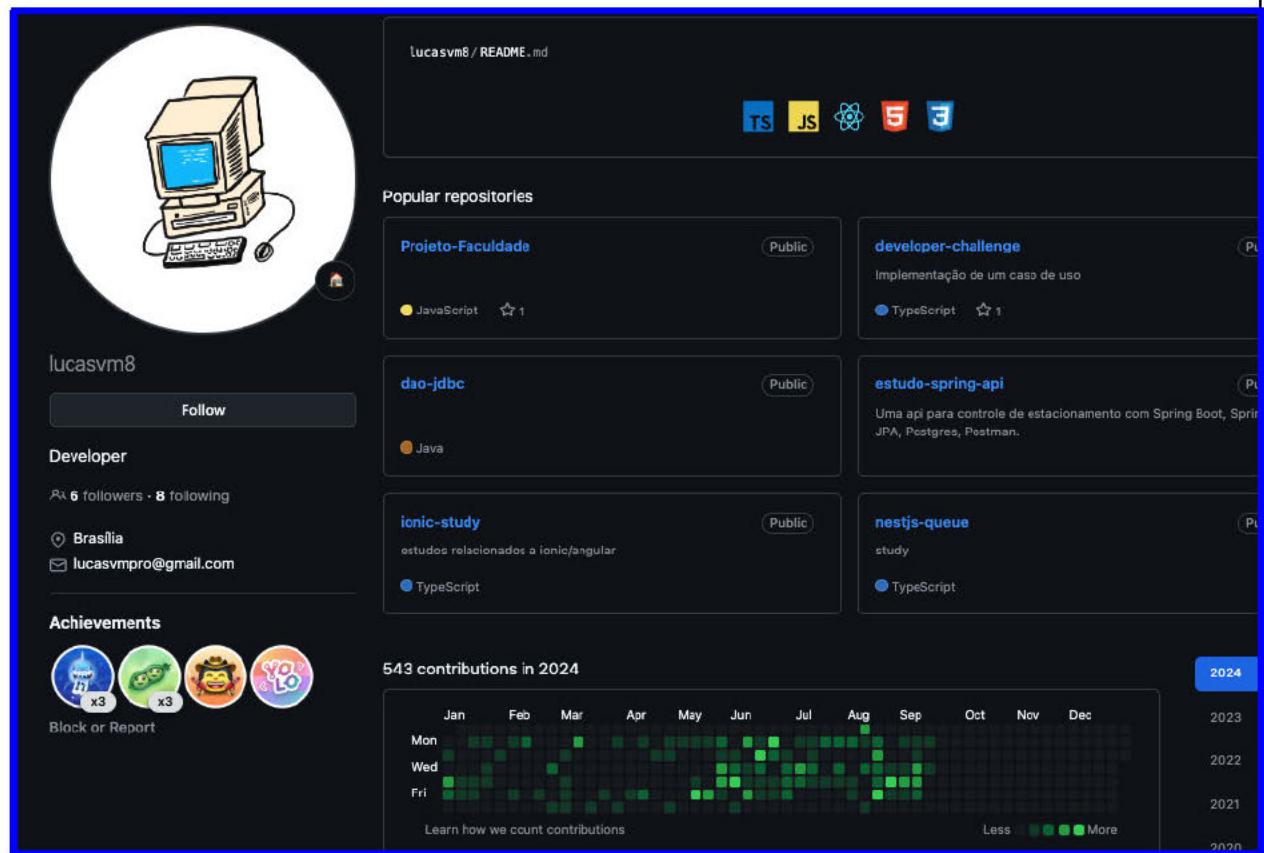
20 168. ~~114.~~ At the same time, Swan continued to investigate the former-Swan
21 personnel's departures and conspiracy with the Defendants. As a GitHub member,
22 Swan is able to view obscured versions of private activity on GitHub, including that
23 of its former employees and contractors, including the former Swan conspirators.
24 Defendant Monteleone (username: RDMEC), Defendant Vasconcelos (username:
25 lucasvm8), and Zagury (username: pxsocs) ~~have been~~were highly active on GitHub
26 following their resignations from Swan, during the weeks of August and September
27 2024, as indicated by the concentration of bright green dots in each GitHub account's
28 "heat map":

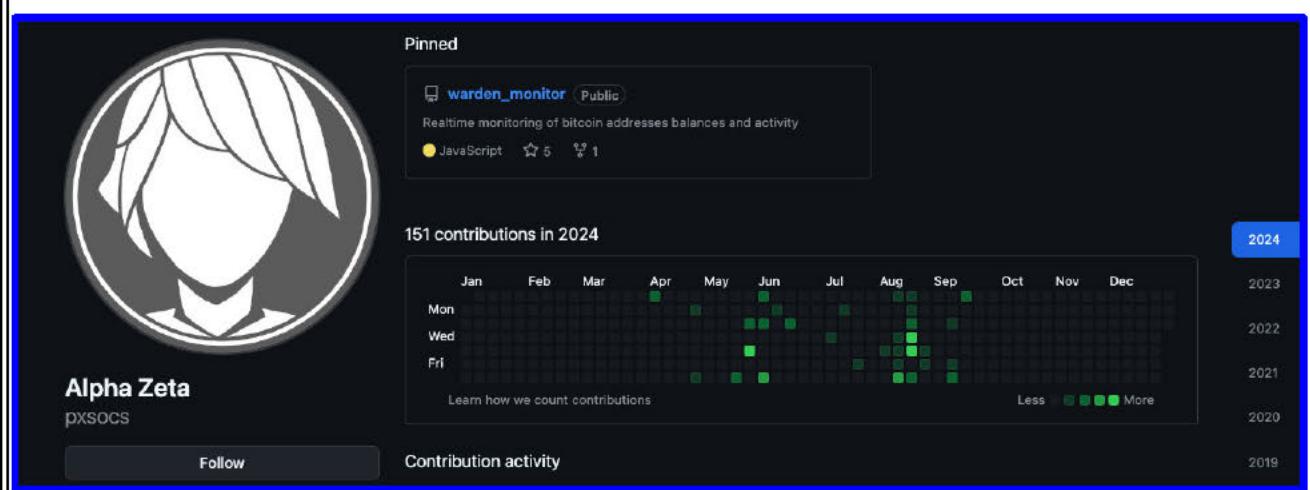
1 Screenshot of Defendant Monteleone's GitHub activity (as of September 2024)



1 Screenshot of Defendant Vasconcelos's GitHub activity (as of September 2024)

2 169. Zagury's contribution activity in particular indicates that he ~~has been~~^{was}
3 more active on GitHub in August than the preceding months when he was a Swan
4 employee:¹⁶





Screenshot of Zagury's GitHub activity (as of September 2024)

170. —On information and belief, Defendant Monteleone, Defendant Vasconcelos, and Zagury's high GitHub activity levels following their resignations of Swan ~~are~~^{were} the result of their continued access to and use of Swan's BNOC.¹⁷

171. ~~115.~~ On September 13, 2024, Tether's counsel proposed written resolutions of the Board of Directors of 2040 Energy [REDACTED]
[REDACTED], nominally asking for Klippsten's review and approval as a director. Among other things, the resolutions:

18
19
20
21
22
23
24
25
26

¹⁷ As of January 27, 2025, Defendant Vasconcelos's and Zagury's GitHub activity is not publicly-viewable.

1

2 172. ~~116.~~ Swan responded that Klippsten could not sign the resolutions
3 because they were misleading: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] ~~Again, Swan reserved, reserving~~ all rights. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 173. ~~117.~~ Defendants also sought, and continue to seek, to whitewash their
18 conduct, trade on Swan's name, and mislead third parties. In an email to a Swan
19 vendor on September 14, 2024, for example, Tether's counsel stated: "2040 Energy
20 [] ***has experienced a nominal change in management. Some of the team from Swan***
21 ***Bitcoin now provides day-to-day management services to 2040 through an***
22 ***independent management company.*** I expect that Tyler Effertz and Bill Belitsky
23 (copied) will be familiar to you." Tether's counsel did not, of course, disclose the
24 Defendants' scheme to steal Swan's Bitcoin business, personnel, and confidential and
25 proprietary information and trade secrets for this "independent management
26 company."

27 **X. Swan Brings This Suit, and the Defendants Provide False Excuses for**

28

1 **Their Misconduct.**

2 174. Swan filed its original Complaint against Defendants on September 25,
3 2024. At the same time, Swan filed an application for a temporary restraining order
4 against Defendants, seeking to enjoin Proton and the Individual Defendants from,
5 among other things, disclosing or using any Swan proprietary and confidential
6 material or trade secrets.

7 175. In opposing Swan's request for relief, the Individual Defendants did not
8 deny that they were using Swan's proprietary information and trade secrets. Instead,
9 they repeatedly represented that, to the extent Proton and the Individual Defendants
10 were using Swan's proprietary information and trade secrets, Proton and the
11 Individual Defendants were using that information "solely for the benefit of 2040
12 Energy ... and no others." Dkt. 29-1 at 4. "[T]his case is particularly unique because

13 of Swan's continued interest in 2040 Energy... Proton and the Individual Defendants
14 are working only for 2040 Energy. Therefore, to the extent the Individual Defendants
15 are using purported trade secrets, it is for the sole benefit of 2040 Energy—and thus
16 Swan too. Therefore, there is no actual, let alone irreparable, harm to Swan." *Id.* at
17 12.

18 176. The Court denied Swan's request for relief on October 4, 2024.

19 177. Meanwhile, the parties met and conferred regarding a process through
20 which the Individual Defendants would return their Swan laptops. The Individual
21 Defendants represented to the Court that the parties "ha[d] agreed to share all the
22 laptops," which were in the possession a third-party vendor, and that the Individual
23 Defendants "just wanted to have a process which we propose to ensure that [Swan]
24 got what they needed but [the Individual Defendants'] interests were also protected."
25 In response, the Court noted that the issue appeared "easily solvable," suggesting that
26 "we just turn the vendor into effectively a special master, that if [Defendants are]
27 going to withhold files, that they create a log that shows the other side what files are

1 being withheld. in the immediate time both sides will have access to images of,
2 you know, at least relevant portions of the laptops.”

3 178. On October 25, 2024, the Court denied Swan’s motion for an order
4 compelling the Individual Defendants to return the laptops at issue to Swan, while
5 ordering “the Individual Defendants to continue to store the laptops in discovery
6 vendors’ facilities in the meantime until either the parties reach a stipulation regarding
7 their treatment or further order of Court.” Dkt. 63.

8 179. Also on October 25, Gibson, Dunn & Crutcher LLP (“Gibson”)
9 Swan’s then lead and only counsel on this case— informed Swan that the firm was on
10 the verge of hiring a lateral attorney whose current client presented a conflict with
11 Gibson’s representation of Swan. Gibson identified that client as Tether.

12 180. On November 24, 2024, Gibson moved to withdraw as counsel for Swan.
13 That motion was granted on January 6, 2025.

14 **XI. Defendants Continue to Use Swan’s Confidential Information and Trade**
Secrets and Their Representations to the Court Prove Hollow.

16 181. In the months since the Defendants represented that they were using
17 Swan’s proprietary information and trade secrets “solely for the benefit of 2040
18 Energy[,] and no others,” Swan has uncovered evidence that strongly suggests those
19 representations were either false when made or, at a minimum, are no longer true.

20 182. On information and belief, and for the reasons laid out below,
21 Defendants have used Swan’s proprietary information and trade secrets to further
22 Bitcoin mining operations *outside of 2040 Energy.*

23 183. As noted above, Swan’s mining operations generated [REDACTED]

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 184. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 185. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 186. On information and belief, Defendant Proton has diverted the Bitcoin
21 mining proceeds [REDACTED] to wallets solely
22 controlled by Proton or some other third party. Either Defendant Proton is continuing
23 to manage operations at Swan's former mining sites—using Swan's proprietary
24 information and trade secrets to do so—but directing those proceeds to non-2040
25 Energy wallets, which are controlled by Proton, Tether, or some other third party; or
26 Proton has withdrawn operations and equipment from Swan's former mining sites,
27 and is deploying that equipment at new mining sites—using Swan's proprietary

28

1 information and trade secrets to identify and grow those new sites. Both courses of
2 conduct would constitute clear misuse of Swan's proprietary information and trade
3 secrets.

4 187. The other possible—though illogical—explanation would be that
5 Defendants have ceased mining Bitcoin altogether. But other recently-discovered
6 evidence indicates this is not the case. As described above, shortly after the Individual
7 Defendants resigned from Swan, they continued to do business with vendors Swan
8 had previously engaged to support its mining operations. Indeed, almost immediately
9 after the Individual Defendants and their co-conspirators resigned, they continued to
10 actively manage operations at Swan's mining sites, under the name "Elektron
11 Energy," which, at present, Swan understands to be an alias of Defendant Proton.
12 Indeed, for a period of time after the resignations, Swan continued to receive
13 communications between the Individual Defendants and the on-site operators of some
14 of its mining sites, either via email chains that the Individual Defendants apparently
15 did not realize still included Swan email addresses or in Telegram channels that Swan
16 had established and that the Individual Defendants apparently did not realize Swan
17 could still monitor.

18 188. For example, on August 17, 2024, Brett Hiley—Swan's former Vice
19 President of Institutional Operations & Research—exchanged emails with mining
20 operators at a mining site [REDACTED] regarding a power outage at the site. Hiley,
21 emailing from a [REDACTED]@elektron-energy.com email address, provided details on
22 power usage at the mining site—likely using a copy of the BNOC source code and
23 information that the Individual Defendants and their conspirators had downloaded
24 before their resignations. Hiley signed his emails as "VP, Institutional Operations &
25 Research," the same title he held at Swan, but now with his Elektron Energy email
26 address under the position.

27 189. As another example, through October 2024, Swan continued to receive
28 Telegram messages between certain Individual Defendants, their co-conspirators, and

1 operators at [REDACTED]. Swan had set up the
2 Telegram chat thread so that its consultants and employees directing the [REDACTED]
3 mining operations could easily send instructions to and field questions from personnel
4 operating that site. The day before their resignations, Defendant Romualdez and co-
5 conspirator Kartheek Sola exchanged messages with the [REDACTED] site reflecting just
6 that. Then, on August 9, before resigning from Swan with the rest of his co-
7 conspirators, Defendant Romualdez messaged the [REDACTED] site: "Hi team – we'd like
8 to cancel this week's meeting. Please let us know if you need anything from our end."
9 Just days later, on August 13, Defendant Romualdez, Defendant Holmes, and co-
10 conspirator Sola—now officially at Proton—picked up messaging right where they
11 had left off, asking for updates on [REDACTED] Bitcoin mining performance and
12 directing the site's operations.

13 190. As late as January 17, 2025, the conspirators were continuing to
14 exchange messages with [REDACTED] site regarding its mining operations. On
15 January 17, Hiley sent a Telegram message to operators of that site, sharing a
16 document assessing the site's performance, which was labeled [REDACTED]
17 [REDACTED] Hiley appears to have deleted that message shortly after sending it,
18 presumably in an attempt to conceal from Swan Defendants' continued mining
19 operations at these mining sites. This correspondence, coupled with [REDACTED]
20 [REDACTED]
21 [REDACTED] suggests that Defendants are continuing to
22 operate the [REDACTED] site, but no longer transferring the Bitcoin generated by those
23 mining activities to 2040 Energy.

24 191. Defendant Holmes and co-conspirator Kartheek Sola similarly continued
25 to message with operators at a mining site in [REDACTED], after the pair had
26 resigned from Swan, using a Telegram chat thread that they had previously used to
27 communicate with the site while working for Swan.

1 192. Even this small smattering of communications that Defendants have
2 inadvertently sent in a way that allows Swan to see them indicates that Defendants
3 continue to manage at least some of Swan's former mining sites and have entirely
4 coopted the proceeds. On information and belief, around the end of October 2024,
5 Defendant Proton decided to drop any façade, and simply diverted the proceeds from
6 former Swan mining sites that it continued to manage away from the 2040 Energy
7 wallets.

8 193. Recent evidence also shows that Defendants have ceased operations at
9 other of Swan's former mining sites, removing extremely valuable mining
10 infrastructure from those sites so that Proton can deploy that mining equipment
11 elsewhere, for its own benefit or that of third parties (not 2040 Energy, and much less
12 Swan). According to a person who works at one of these mining sites, shortly after
13 the Individual Defendants and their co-conspirators resigned from Swan, some of
14 them reached out to this mining site, directing the site to cease operations and return
15 all of the mining equipment to the conspirators.

16 194. Additional communications between Defendant Proton and Tether from
17 around this time—which Swan received due to Defendants' inadvertence—further
18 show that Proton was providing Bitcoin mining-related services to Tether outside any
19 supposed relationship with 2040 Energy.

20 195. On December 5, 2024, a representative of Marlin Capital Partners, Jared
21 Stein, emailed Raphael Zagury and Defendant Naidoo. Stein used Zagury's
22 “elektron-energy.com” email address, but inadvertently emailed Defendant Naidoo
23 using his “[REDACTED]@swanbitcoin.com” email address. Mr. Stein included Tether's
24 Christopher Cowell on that email, and arranged a call between the four of them that
25 day, to discuss an opportunity Tether had to invest in a supplier of Bitcoin mining
26 machines. After that call, Mr. Stein followed up on the same email chain, writing,
27 “Chris and I were discussing how we can refine the valuation a bit and were

1 wondering if you have a model for the opportunity cost of deploying hash rate sooner
2 vs later (I recall this is a topic we discussed back around the inception of 2040.)”

3 196. Zagury responded to Stein’s email (again including the Swan email
4 address): “I’m not sure if we have shared this one with you before. But the attached

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED]

9 [REDACTED] In other words, based on current market
10 conditions, if given the choice to invest in Bitcoin or purchase ASICs to mine Bitcoin,
11 the smart choice was to accumulate as many ASICs as possible, and use them to start
12 mining Bitcoin as soon as possible.

13 197. Zagury’s sharing of the [REDACTED] spreadsheet with Tether also
14 strongly suggests that Proton has shared Swan’s proprietary information and trade
15 secrets with Tether (and potentially others). While the [REDACTED] spreadsheet
16 is not an exact copy of any file that the Individual Defendants and their co-
17 conspirators stole before resigning from Swan, the tools and functions in that
18 spreadsheet closely mirror those that Swan created during the Individual Defendants
19 and their co-conspirators’ time with the company.

20 198. Indeed, on June 21, 2024, while still employed at Swan, Zagury asked
21 Swan’s mining team to work on [REDACTED]
22 [REDACTED]
23 [REDACTED] Zagury appears
24 to have sent this message while working from Zachary Lyons’ office.

25 199. [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 200. On December 23, 2024, Defendant Proton and the Individual Defendants
7 moved to dismiss Swan's original Complaint. Notably, and in contrast to the
8 representations the Individual Defendants made when opposing Swan's requests for
9 *ex parte* relief, those motions were silent on whether or not Defendant Proton and the
10 Individual Defendants were using Swan's proprietary information and trade secrets
11 for the benefit of any entity other than 2040 Energy.

12 201. In January 2025, consistent with the parties' prior conferrals and the
13 Defendants' representations to the Court last October, Swan attempted to confer with
14 the Individual Defendants to reach agreement on a proposal for the inspection and
15 return of the laptops Swan purchased for the Individual Defendants as well as any
16 other Swan Confidential Information in the Individual Defendants' possession,
17 pursuant to the Individual Defendants' contracts with Swan. Despite the Individual
18 Defendants' earlier representations, they are now refusing to engage in the
19 compromise proposal that they previously offered to the Court. And when Swan
20 asked Defendants directly during a conferral whether Defendants are presently
21 engaged in mining activities outside of 2040 Energy, Defendants refused to answer.

22 **XII. VIII. Swan Has Been, and Continues to Be, Irreparably Harmed by**
Defendants and Their Coconspirators' Misconduct.

24 202. 118. Swan has suffered irreparable harm because of Defendants'
25 misconduct, and it will continue to suffer irreparable harm if Defendants are not
26 enjoined from continuing their misdeeds.

27 203. 119. On information and belief, ~~Defendant Proton is~~ Defendants are
28 currently using and integrating (changing) in Proton's business Swan's confidential

1 and proprietary information, including its trade secrets like BNOC, and details about
2 every minutiae for the operation and management of Swan's mining sites, that
3 Defendants and the Swan conspirators stole ~~in Defendant Proton's copycat Bitcoin~~
4 ~~mining business~~. Put simply, Defendant Proton is an unlawful enterprise with no
5 legitimate grounds for existence, operating each day using ~~Swan Bitcoin's~~Swan's
6 confidential and proprietary information and intellectual property—including insider
7 ~~know how~~knowledge of the same from Swan's former personnel. Every day that
8 goes by, for example, makes it more and more difficult for Swan to trace and recover
9 its trade secrets~~-, or to recover from the damage that has been done and continues to~~
10 multiply from Swan being shut out of its own business while its most important assets
11 are deployed for Defendants' benefit rather than Swan's. Defendants' theft of Swan's
12 confidential information and trade secrets and raid of Swan's mining business has
13 crippled Swan's mining operations. Even if Swan were able to replace the individual
14 consultants and employees following their resignations, Proton's continued use of
15 Swan's confidential information and trade secrets to manage Swan's former mining
16 sites and develop potential new mining sites essentially eliminates the competitive
17 edge that Swan had established by developing the extensive confidential and
18 proprietary material that Defendants stole.

19 204. The danger to Swan is particularly acute if Defendants are using Swan's
20 confidential information and proprietary trade secrets to deploy and manage Bitcoin
21 mining operations *outside* of 2040 Energy, as evidence uncovered since Swan filed
22 its initial Complaint strongly suggests (and Defendants' recent refusal to answer
23 basic, direct questions about any such non-2040 Energy mining operations seems to
24 confirm). Defendants' continued use of Swan's confidential information and trade
25 secrets outside of 2040 Energy creates a serious, incalculable risk that Swan will lose
26 complete control over who has access to its trade secrets, how those trade secrets are
27 used, and the business opportunities that come with such use (to the extent Swan has
28 not already lost such control as a result of Defendants' actions).

1 205. ~~120.~~ The individual Defendants have also blatantly refused (~~three~~four times) to return Swan’s physical and intellectual property containing this and other Swan information (including their Swan devices). Swan’s confidential and proprietary information and trade secrets are at serious risk of being further disclosed and used for purposes detrimental to Swan and for Defendants’ benefit ~~from these devices~~, and ~~Defendants are preventing~~ Swan ~~has been prevented~~ from even investigating the full extent of Defendants’ theft and misconduct, ~~and therefore the real, ongoing irreparable harm it has incurred and continues to incur~~.

9 ~~121. Defendants’ misconduct has also dealt a critical blow to Swan’s current ability to raise investment capital, which is vital to the future of its business. Swan finds itself in the untenable position of searching for financing partners for its Series C fundraising round while its valuable, sensitive, and proprietary information and trade secrets are compromised.~~

14 206. ~~122.~~ The ongoing and irreparable harm to Swan goes further. As outlined above, Swan invested significant time and effort developing its vendor relationships and reputation. Defendants have attempted to capitalize on Swan’s reputation by falsely implying to vendors and others that “Swan” is still responsible for the day-to-day operations of 2040 Energy. For example, Defendants have represented to third parties that 2040 Energy has “experienced a nominal change in management” and that “[s]ome of the team from Swan Bitcoin now provides day-to-day management services to 2040 through an independent management company.”

22 207. ~~123.~~ Though Defendants have thrown up every roadblock they can, Swan has already had to expend ~~still made every effort and expended~~ significant resources to ~~identify and~~ investigate and try to identify even a sliver of Defendants’ egregious misconduct and prepare to redress their misdeeds, ~~and its investigation is ongoing (for which~~ As appalling as the current record is, it is likely only the tip of the iceberg. Swan expects that discovery will demonstrate even more misconduct, and so Swan reserves all rights to amend its allegations, defendants, and claims). ~~But~~

1 ~~the current and ongoing risks to Swan are real as it learns more information.~~ The
2 harm to Swan's business and long-term prospects are—and, if Defendants are not
3 enjoined to cease their misconduct, will continue to be—irreparable.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Trade Secret Misappropriation under the Defend Trade Secrets Act**

7 **(18 U.S.C. § 1836, *et seq.*)**

8 *(Against All Defendants)*

9 208. ~~124.~~ Each of the foregoing paragraphs is incorporated into this First
10 Cause of Action, as if set forth herein.

11 209. ~~125.~~ Swan possesses and owns trade secrets related to its Bitcoin mining
12 business as defined by 18 U.S.C. § 1839(3).

13 ~~126. Swan's BNOC ("Bitcoin Network Operating Center") is a trade secret.~~
14 ~~BNOC is a software platform for managing mining data and analytics.~~ [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 210. Swan's mining site- and vendor-selection methods and techniques
24 constitute trade secrets. [REDACTED]

25 [REDACTED]

26 [REDACTED] These methods and
27 techniques were not generally known to, and not readily ascertainable through proper
28 means by, the public.

1 211. ~~127.~~ Swan's hash-rate optimization techniques also constitute trade
2 secrets. Swan's proprietary techniques, [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 These techniques include, for example, [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] Swan's specific
9 use, deployment, and combination of these techniques in Bitcoin mining are unique.
10 These techniques were not generally known to, and not readily ascertainable through
11 proper means by, the public.

12 212. ~~128.~~ Swan's proprietary financial modeling, data analytics and
13 monitoring tools also constitute trade secrets. [REDACTED]
14 [REDACTED]
15 [REDACTED] marketing [REDACTED] These methods and tools were
16 not generally known to, and not readily ascertainable through proper means by, the
17 public.

18 213. Swan's BNOC ("Bitcoin Network Operating Center") is a trade secret.
19 BNOC is a software platform for managing mining data and analytics. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED] BNOC was not generally known
28 to, and not readily ascertainable through proper means by, the public.

1 214. ~~129.~~ Swan ~~has taken used~~ reasonable ~~precautions~~efforts to protect its
2 trade secrets, including but not limited to implementing confidentiality policies and
3 procedures concerning Swan's trade secrets, granting limited access to Swan's trade
4 secrets, and requiring individuals provided access to enter into confidentiality
5 agreements and take strict security measures when accessing Swan's trade secrets.

6 215. ~~130.~~ Swan derives independent economic value from its trade secrets not
7 being generally known to, and not being readily ascertainable through proper means
8 by, the public. Swan's trade secrets are proprietary techniques and methodologies
9 that allow Swan to successfully and efficiently mine Bitcoin. Swan's ~~trade secrets~~
10 ~~drove 2040 Energy to its recent ten figure valuation~~former-Chief Investment
11 Officer—who is now working for Defendant Proton—recognized that Swan's trade
12 secrets had allowed Swan to “deploy[] hashrate faster than any other company in
13 Bitcoin,” and accordingly valued just Swan’s share of its mining operations at over
14  Having access to such information would give a competitor a
15 tremendous head-start on prospective new Bitcoin mining operations and a roadmap
16 for how to immediately and effectively compete with Swan's operation and reduce or
17 eliminate Swan’s competitive edge.

18 216. ~~131.~~ Defendants have improperly acquired, used and/or disclosed
19 Swan's trade secrets in violation of the Defend Trade Secrets Act, 18 U.S.C. § 1836,
20 *et seq.*

21 217. ~~132. On information and belief, if~~If Defendants are not enjoined, they
22 will continue to access, use, disclose, or otherwise misappropriate Swan's trade
23 secrets to benefit themselves ~~(with Defendant Proton)~~ to Swan's detriment. As
24 detailed in paragraphs 187-191, Defendants are using Swan’s trade secrets to manage
25 Swan’s former mining sites, for the benefit of unidentified third parties (including,
26 potentially, Tether or “Elektron Energy”). Additionally, as detailed in paragraph
27 ~~114~~168-170, for example, Defendant Monteleone (and Defendant Proton's current
28 CEO Raphael Zagury) has been highly active on GitHub following his resignation in

1 August and September; on information and belief, that activity is due to his access to
2 and use of Swan's BNOC with and for Defendant Proton.

3 218. ~~133.~~ Defendants' misappropriation of Swan's trade secrets has caused
4 and continues to cause substantial injury to Swan's business, including, but not
5 limited to actual damages, lost profits, harm to its reputation, and the diminution of
6 the value of its trade secrets. Defendants have been unjustly enriched by their
7 misappropriation of Swan's trade secret information.

8 219. ~~134.~~ Swan seeks ~~temporary, preliminary, and permanent~~ injunctive
9 relief pursuant to 18 U.S.C. § 1836(b)(3)(A) against all Defendants to protect the
10 secrecy of its trade secret documents and information and to remedy injury to Swan's
11 business interests and reputation. Swan will continue to suffer irreparable harm absent
12 the requested injunctive relief.

13 220. ~~135.~~ Swan also seeks a permanent injunction against Defendant Proton,
14 as well as an award of actual damages ~~from Defendant Proton~~ in an amount to be
15 proven at trial under 18 U.S.C. § 1836(b)(3)(B).

16 221. ~~136.~~ Because Defendants' misappropriation and use of Swan's trade
17 secrets was intentional, knowing, willful, and oppressive, Swan also seeks exemplary
18 damages from Defendant Proton up to two times the award of actual damages under
19 18 U.S.C. § 1836(b)(3)(C) and attorneys' fees under 18 U.S.C. § 1836(b)(3)(D).

20 **SECOND CAUSE OF ACTION**

21 **Breach of Contract (Consulting Agreement)**

22 *(Against Defendants Holmes, Ilios, Naidoo, Monteleone, Romualdez, Furlong, and
23 Vasconcelos)*

24 222. ~~137.~~ Each of the foregoing paragraphs is incorporated into this Second
25 Cause of Action, as if set forth herein.

26 223. ~~138.~~ The consulting agreements Defendants Holmes (on behalf of
27 Defendant Ilios), Naidoo, Monteleone, Romualdez, and Furlong signed are valid and
28 binding contractual agreements.

1 ~~139. Swan fully performed its obligations under the consulting agreements.~~

2 ~~224. 140.~~ The consulting agreements were made for valid consideration,
3 including the compensation each of these Defendants received from Swan.

4 ~~225. Swan fully performed its obligations under the consulting agreements~~
5 ~~(including by paying Defendants their agreed-upon compensation), or else Swan was~~
6 ~~excused from performance.~~

7 ~~226. 141.~~ As detailed in paragraph ~~54~~100 and footnote ~~59~~ above, Defendants
8 Holmes (on behalf of Defendant Ilios), Naidoo, Monteleone, Romualdez, and Furlong
9 agreed to safeguard Swan “Confidential Information,” promising in their respective
10 consulting agreements that they each would “hold in the strictest confidence, and take
11 all reasonable precautions to prevent any unauthorized use or disclosure of
12 Confidential Information.”

13 ~~227. 142.~~ These Defendants further agreed not to “(i) use the Confidential
14 Information for any purpose whatsoever other than as necessary for the performance
15 of the Services on behalf of the Company, or (ii) subject to Consultant’s right to
16 engage in Protected Activity [], disclose the Confidential Information to any third
17 party without the prior written consent of an authorized representative of the
18 Company.”

19 ~~228. 143.~~ Defendants Holmes (on behalf of Defendant Ilios), Naidoo,
20 Monteleone, Romualdez, and Furlong further agreed that they would “not use or
21 disclose any Company property, intellectual property rights, trade secrets or other
22 proprietary ~~know-how~~know-how of the Company to invent, author, make, develop,
23 design, or otherwise enable others to invent, author, make, develop, or design identical
24 or substantially similar designs as those developed under this Agreement for any third
25 party.”

26 ~~229. 144.~~ These Defendants agreed that their obligations to safeguard Swan’s
27 confidential information “shall continue after the termination of [their]
28 Agreement[s].”

1 230. ~~145.~~ Defendants Holmes (on behalf of Defendant Ilios), Naidoo,
2 Monteleone, Romualdez, and Furlong breached the foregoing provisions of their
3 respective consulting agreements by stealing Swan's confidential and proprietary
4 information—including but not limited Swan's mining performance data, data related
5 to Swan's mining inventory, mining operations and machine performance and
6 configuration, financial modeling and information, weekly reports of all operations,
7 and ongoing deals with Swan business partners—to use for Defendant Proton's
8 benefit.

9 231. ~~146.~~ On information and belief, Defendants have disclosed and used and
10 are continuing to disclose and use Swan's confidential and proprietary information to
11 operate ~~and for~~ Defendant Proton.

12 232. ~~147.~~ Swan has suffered and will suffer irreparable harm as a direct and
13 proximate result of the individual Defendants' past and ongoing breaches of their
14 respective consulting agreements—including the further loss of its confidential and
15 proprietary information and trade secrets—for which there is no adequate remedy at
16 law.

THIRD CAUSE OF ACTION

Tortious Interference with Contractual Relations

(Against Defendants Proton, Holmes, and Naidoo)

20 233. ~~148.~~ Each of the foregoing paragraphs is incorporated into this Third
21 Cause of Action, as if set forth herein.

22 234. ~~149.~~ As part of their employment and for valid consideration, including
23 compensation from Swan, Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky signed
24 “Confidentiality and Proprietary Information and Inventions Agreements” with Swan
25 (“Employee Confidentiality Agreements”).

26 235. ~~150.~~ Swan fully performed its obligations under the Employee
27 Confidentiality Agreements, or else its performance was excused.

1 229. None of Zagury, Dozic, Effertz, Hiley, Sola, or Belitsky lived or worked
2 in California. Their agreements were subject to the laws of Florida (Zagury, Effertz),
3 Pennsylvania (Dozic), Washington (Hiley), Alabama (Sola), and Indiana (Belitsky).

4 236. 151. As part of those contracts, Zagury (now Defendant Proton's CEO),
5 Dozic, Effertz (now Defendant Proton's Chief Financial Officer), Hiley, Sola, and
6 Belitsky agreed that, "at any and all times during my service with the Company, I will
7 not engage in any acts of competition against the interests of the Company and/or any
8 of its affiliates, regardless of the capacity in which I am acting on behalf of any
9 Competing Business, and instead shall devote my full-time and attention only to the
10 interests of the Company and in furtherance of the Company business." For the "term
11 of my service only, prohibited acts of competition" included: "performing any
12 services for a Competing Business¹⁴¹⁸;" "hiring, recruiting or soliciting any employee
13 of the company;" and "disclosing, misappropriating, or using any property of the
14 Company or any affiliate, including, without limitation, any form of Confidential
15 Information, Proprietary Information or Trade Secret, other than in furtherance of the
16 Company Business."

17 237. 152. Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky also agreed that,
18 "for a period of twelve months following termination of my Service, I will not, either
19 directly or indirectly, solicit, entice, encourage, cause, or recruit any person employed
20 by the Company or any affiliate to leave such person's employment with the Company
21 or any affiliate to join a Competing Business."

22 238. Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky also agreed that they
23 would "not at any time, other than in the performance of [their] Service for the
24 Company or any affiliate, both during and after [their] Service with the Company,

25 ¹⁴¹⁸ "Competing Business" is defined in the Employee Confidentiality Agreements
26 as "any person or entity that engages in a commercial business that is the same or
27 substantially similar to the Company Business, and only that portion of the business
28 that is in competition with the Company Business." "Company Business" is defined,
in part, as any "business in which the Company engages during my Services with the
Company"— in this case, Bitcoin mining.

1 communicate or disclose to any person or entity, or use for my benefit, or for the
2 benefit of any other person or entity, either directly or indirectly, any Trade Secrets
3 and/or Proprietary Information.”¹⁹

4 239. ~~153.~~ Swan had a contractual expectancy that Zagury, Dozic, Effertz,
5 Hiley, and Belitsky¹²²⁰ would abide by the Employee Confidentiality Agreements.

6 240. ~~154.~~ Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky breached the
7 foregoing provisions of the Employee Confidentiality Agreements by planning,
8 coordinating, and conspiring with and through Defendant Proton and others, including
9 but not limited to Defendants Holmes and Naidoo, to compete with Swan during their
10 employment by working on behalf of Proton’s competing mining business and
11 soliciting Swan’s employees to leave their employment and of Swan’s independent
12 contractors to terminate their services as independent contractors during the time
13 period prohibited by the Employee Confidentiality Agreements to work for Proton.

14 ~~241.~~ ~~155.~~ Several of the ~~then~~ Swan employees and contractors that
15 Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky, ~~with~~ Defendants’ help, ~~with~~
16 unlawfully solicited ~~then~~ resigned from Swan and started working for Proton ~~shortly~~
17 thereafter. On information and belief, that solicitation may be ongoing as to at least
18 certain individuals whom Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky solicited
19 from Swan and who have already resigned from Swan, but who have not yet surfaced
20 publicly as working with or for Defendant Proton.

21 ¹⁹ “Proprietary Information” is defined in the Employee Confidentiality Agreements
22 to include “all technical and non-technical data, compilations, programs and methods,
23 techniques, drawings, processes, financial data, actual and prospective customer lists,
24 customer route books and materials, documents containing names and addresses of
25 current or former customers that includes their past or present buying patterns or
26 habits, sales reports, service reports, price lists and discount lists, methods and/or
procedures regarding pricing, product cost and profit strategies or structures, product
formulae, methods and/or procedures related to sales or services, methods and/or
procedures of operation, special training of sales representatives, continuous market
updates and merchandising strategies relating to the Company, any affiliate of the
Company, and the Company Business.”

27 ¹²²⁰ Swan reserves its rights based on Defendants Holmes/Ilios, Naidoo, Monteleone,
28 Romualdez, and Furlong’s breaches of their ~~nonsolicitation~~non-solicitation obligations.

1 156.— Defendants Proton, Holmes, and Naidoo had knowledge of Swan’s
2 contractual relationship with Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky at all
3 material times, including knowledge that those agreements contained confidentiality,
4 non-competition, and non-solicitation provisions. For example, in calls leading up to
5 the Individual Defendants’ resignations from Swan, Defendants Holmes and Naidoo
6 met, along with Belitsky, and discussed “non-solicit; non-compete” and
7 “Confidentiality and IP” concerns, noting that they “would be exposed,” and likely
8 did not have any “leverage” to secure releases upon departure.

9 242. ~~157.~~ Defendants Proton, Holmes, and Naidoo intentionally interfered
10 with the Employee Confidentiality Agreements by planning, coordinating, and
11 conspiring with Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky to compete with
12 Swan and solicit Swan's employees and contractors to work for Proton.

13 243. ~~158.~~ Based on these Defendants' interference with the Employee
14 Confidentiality Agreements, Swan has had its contractual relationship and
15 expectancies with Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky diverted,
16 disrupted, damaged, and threatened by the actions of Defendants Proton, Holmes, and
17 Naidoo as described herein.

18 244. ~~159.~~ Swan has suffered and will suffer damages as a direct and proximate
19 result of the Defendants Proton's interference ~~including but not limited to actual and~~
20 ~~potential further loss of its personnel for which there is no adequate remedy at law.~~

21 245. ~~160.~~ Swan has suffered and will suffer irreparable harm as a direct and
22 proximate result of the Defendants Proton, Holmes, and Naidoo's interference—
23 ~~including but not limited to actual and potential further loss of its personnel~~— for
24 which there is no adequate remedy at law.

FOURTH CAUSE OF ACTION

Aiding and Abetting Breach of Duty of Loyalty

(Against Defendant Proton)

28 246. ~~161.~~ Each of the foregoing paragraphs is incorporated into this Fourth

1 Cause of Action, as if set forth herein.

2 247. ~~162.~~ Swan's employees and executives, including but not limited to
3 Zagury, Dozic, Effertz, Hiley, Sola, and Belitsky, owed a duty of loyalty to Swan
4 during their employment. At least Zagury, as Swan's Chief Investment Officer, and
5 Belitsky, as Swan's General Counsel, owed Swan fiduciary duties.

6 248. ~~163.~~ Defendant Proton was aware of these duties.

7 249. ~~164.~~ Defendant Proton knowingly and intentionally interfered with and
8 induced Swan's employees, including but not limited to Zagury, Belitsky, Dozic,
9 Effertz, Sola, and Hiley, to breach their duties of loyalty by planning, coordinating,
10 and conspiring with and through others, including but not limited to Defendants
11 Holmes and Naidoo, to, while employed by Swan, assist Defendant Proton in
12 preparing to compete with Swan's mining business and to solicit (a) Swan's
13 employees to leave their employment and (b) Swan's independent contractors to
14 terminate their services as independent contractors.

15 250. ~~165.~~ Defendant Proton's aiding and abetting of the Swan employees'
16 disloyalty has caused and continues to cause substantial harm to Swan's business.

17 FIFTH CAUSE OF ACTION

18 Unfair Competition Under Business & Professions Code § 17200

19 *(Against All Defendants)*

20 251. ~~166.~~ Each of the foregoing paragraphs is incorporated into this Fifth
21 Cause of Action, as if set forth herein.

22 252. ~~167.~~ California Business & Professions Code § 17200 prohibits any
23 "unlawful, unfair or fraudulent business act or practice."

24 253. ~~168.~~ Defendants' business acts and practices as alleged herein constitute
25 ongoing unlawful and unfair activity in violation of California's Unfair Competition
26 Law ("UCL"), as codified in California Business and Professions Code § 17200 *et*
27 *seq.*

28 254. ~~169.~~ Specifically, Defendants acted and are acting unlawfully and

1 unfairly under California's UCL by orchestrating and carrying out a course of conduct
2 to disrupt, divert, and steal Swan's entire Bitcoin mining business by, for example
3 and without limitation:

- 4 • Misappropriating, and/or planning, coordinating, and conspiring
5 with the other Defendants and other Swan employees and
6 consultants to misappropriate, documents and files containing
7 Swan's proprietary and confidential information;
- 8 • Planning and executing a scheme to lift out the entirety of Swan's
9 Bitcoin mining personnel to accept roles at Defendant Proton, a
10 counterfeit competitor created for the sole purpose of using
11 Swan's stolen technology, resources, and trade secret techniques
12 and methods to usurp its mining business and irreparably harm
13 Swan's ability to compete in the Bitcoin mining market, and doing
14 so in a manner calculated to inflict maximum damage to Swan
15 with a funding partner;
- 16 • Using the proprietary data, information, and resources Defendants
17 stole to operate Defendant Proton's copycat Bitcoin mining
18 business and continuing to work with Swan's vendors while
19 trading on Swan's name; and
- 20 • Other conduct which is presently unknown but will be proven at
21 trial.

22 255. ~~170.~~ Defendants' unlawful and unfair actions allowed Defendant Proton
23 to effectively steal Swan's Bitcoin mining business and set up an illegal copycat,
24 bypassing all the investment of time and resources that Swan undertook to grow its
25 full Bitcoin mining business. This is the epitome of unfair competition, as it
26 disincentivizes the very sort of investment that Swan undertook in the first place.

27 256. ~~171.~~ Swan has suffered and will suffer harm—including irreparable
28 harm for which there is no adequate remedy at law—as a direct and proximate result

1 of Defendants' unlawful and unfair business practices. Swan is entitled to recover
2 restitution from Defendant Proton, including without limitation, all benefits that
3 Defendant Proton received because of its unlawful and unfair business acts and
4 practices. Swan is further entitled to an injunction restraining ~~Defendants from~~
5 ~~engaging in~~ further acts of unfair competition.

6 **SIXTH CAUSE OF ACTION**

7 **Conversion**

8 *(Against Defendants Furlong, Holmes, Ilios,
9 Naidoo, Monteleone, Romualdez, and Vasconcelos)*

10 257. ~~172.~~ Each of the foregoing paragraphs is incorporated into this Sixth
11 Cause of Action, as if set forth herein.

12 258. ~~173.~~ Defendants Furlong, Holmes, Ilios, Naidoo, Monteleone,
13 Romualdez, and Vasconcelos have no right of possession of Swan-issued laptops and
14 equipment following the termination of their consulting agreements.

15 259. ~~174.~~ Defendants Furlong, Holmes, Ilios, Naidoo, Monteleone,
16 Romualdez, and Vasconcelos intentionally and wrongfully exercised control or
17 dominion over Swan's property, and conducted a scheme of wrongful acts with the
18 intention to appropriate the property and deprive Swan of its property.

19 260. ~~175.~~ Swan retained at the time of the conversion, and still retains,
20 ownership in the property.

21 261. ~~176.~~ Swan has suffered and will suffer irreparable harm for which there
22 is no adequate remedy at law as a direct and proximate result of Defendants Furlong,
23 Holmes, Ilios, Naidoo, Monteleone, Romualdez, and Vasconcelos's conversion of
24 Swan's property.

25 **SEVENTH CAUSE OF ACTION**

26 **Civil Conspiracy**

27 *(Against All Defendants)*

28 262. ~~177.~~ Each of the foregoing paragraphs is incorporated into this Seventh

1 | Cause of Action, as if set forth herein.

2 263. ~~178.~~ Defendants (between them and with others) formed and operated a
3 malicious combination with a common design to injure Swan by (a) performing
4 unlawful acts in stealing and misappropriating Swan's confidential and proprietary
5 information and trade secrets as described above for the unlawful purpose of diverting
6 business and economic gain from Swan, and/or (b) performing the lawful acts of
7 competing with Swan and hiring certain of Swan personnel, but doing so through the
8 unlawful means of violating Swan's contractual, statutory, and common-law rights as
9 described above.

10 264. ~~179.~~ The foregoing conduct of the Defendants was malicious, was
11 performed with intent to injure Swan, and was without justification or privilege.
12 Defendants' conduct was undertaken in furtherance of their own personal interests
13 and benefit.

14 265. ~~180.~~ One, some, or all the Defendants engaged in overt unlawful acts and
15 conduct violative of Swan's contractual, common law and statutory rights as
16 described above, and did so with the knowledge, aid, agreement, and support of the
17 other Defendants, causing actual harm to Swan.

18 266. ~~181.~~ By virtue of the formation and operation of this conspiracy by
19 Defendants, and because of the above-described wrongful acts and conduct and the
20 harm and injury caused to Swan thereby, each Defendant as a participant in this
21 conspiracy is liable as a joint tortfeasor for each and every one of the above-described
22 acts committed by each Defendant/coconspirator.

23 267. ~~182.~~ Swan has suffered and will suffer damages and irreparable harm as
24 a direct and proximate result of the Defendants' conspiracy for which there is no
25 adequate remedy at law.

PRAYER FOR RELIEF

27 WHEREFORE, Plaintiff prays for judgment in its favor and against
28 Defendants, as follows:

- 1 A. For a temporary injunction requiring Defendants to immediately take
2 steps to preserve all evidence relevant to the Complaint;
- 3 B. For a temporary ~~and permanent~~ injunction against Defendants, and as
4 well as a permanent injunction against Defendant Proton, including
5 enjoining Defendants, and their agents, servants, employees, successors,
6 and assigns, and all other people acting in concert or conspiracy with any
7 of them or who are affiliated with them, from disclosing, using,
8 accessing, distributing, modifying, moving, altering, deleting, or
9 otherwise disposing of any files, documents, and digital media that
10 contain any Swan proprietary and confidential material or trade secrets,
11 and/or that are derived from such information;
- 12 C. For ~~a temporary and permanent~~an injunction requiring Defendants to
13 immediately turn over to counsel for Swan all laptops and any other
14 Swan-issued devices or hard drives in their possession;
- 15 D. For a ~~permanent~~temporary injunction enjoining Defendants Proton,
16 Holmes, and Naidoo, and a permanent injunction enjoining Defendant
17 Proton, from soliciting Swan's employees to leave their employment
18 ~~during~~for the duration of time ~~period~~ prohibited by the Employee
19 Confidentiality Agreements (including as extended to account for the
20 fact that Defendants have been in breach of, or interfering with, those
21 provisions);
- 22 E. For a ~~permanent~~temporary injunction enjoining Defendants, and a
23 permanent injunction enjoining Defendant Proton, from carrying out a
24 course of conduct to disrupt, divert, and steal Swan's entire Bitcoin
25 mining business;¹³
- 26 F. For other temporary and permanent injunctive relief as further discovery

¹³ ~~Swan reserves the right to seek additional preliminary or injunctive relief without waiver.~~

may show necessary, or that this Court deems proper;

FG. For damages and other relief against Defendant Proton as described in each of the above causes of action, including:

- i. For restitution and/or disgorgement against Defendant Proton;
- ii. For punitive damages against Defendant Proton in an amount to be determined at trial;
- iii. For actual damages against Defendant Proton for misappropriation of trade secrets and for the other unlawful and tortious conduct described herein, including in the form of lost profits resulting from the loss of the Swan's personnel, customers, and the loss of Swan's economic or prospective economic relationships, in an amount to be proven at trial;
- iv. For costs, attorney's fees, and other expenses incurred in this action;
- v. For pre-judgment and post-judgment interest at the maximum legal rate, as applicable, as an element of damages that **Swan** has suffered as a result of Defendant Proton's wrongful acts; and
- vi. For such other relief as the Court may deem just and proper.

JURY DEMAND

Swan respectfully requests a jury trial on all claims for relief.

1 DATED: September 25,
2 2024January 27, 2025

Respectfully submitted,

2 /s/ Stacylyn M. Doore
3

4 **QUINN EMANUEL URQUHART &**
5 **SULLIVAN, LLP**

6 RYAN S. LANDES (State Bar No. 252642)
7 ryanlandes@quinnemanuel.com
8 865 S Figueroa Street, Floor 10
9 Los Angeles, CA 90017-5003
10 Telephone: (213) 443-3145
11 Facsimile: (213) 443-3100

12 STACYLYN M. DOORE (admitted *pro hac vice*)
13 stacylyndoore@quinnemanuel.com
14 111 Huntington Avenue, Suite 520
15 Boston, MA 02199
16 Telephone: (617) 712-7100
17 Facsimile: (617) 712-7200

18 RACHEL E. EPSTEIN (admitted *pro hac vice*)
19 rachelepstein@quinnemanuel.com
20 295 Fifth Avenue
21 New York, NY 10016
22 Telephone: (212) 849-7000
23 Facsimile: (212) 849-7100

24 ~~GIBSON, DUNN & CRUTCHER LLP~~

25 ~~By~~

26 /s/ Hissa Samplin
27

28 Attorneys for Plaintiff
29 Attorneys for Plaintiff
30 ELECTRIC SOLIDUS, INC.
31 d/b/a SWAN BITCOIN